

H.E. NO. 2003-2

STATE OF NEW JERSEY
BEFORE A HEARING EXAMINER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

RUTGERS, THE STATE UNIVERSITY,

Respondent,

-and-

Docket No. CO-H-98-193

C.W.A., LOCAL 1031,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Commission dismiss a Complaint alleging that Rutgers retaliated against four individuals for their organizing activities on behalf of CWA and interfered with the effort of CWA to organize the administrative, professional and supervisory (APS) employees in violation of 5.4a(1), (2) and (3) of the Act. The Hearing Examiner recommended that the Charging Party failed to carry its burden of proof showing protected activity was a substantial or motivating factor in the employment actions. Specifically, the Hearing Examiner concluded that although the four individuals were engaged in protected activities, not every decision-maker for each personnel action was aware of the employees' activities. Additionally, neither Rutgers, generally, nor the decision-makers, specifically, were hostile to the exercise of the protected activity. In particular, an Administrative Assembly delegate was not acting as an agent of Rutgers in opposing the CWA effort. Moreover, the Hearing Examiner found that Rutgers presented legitimate, non-pretextual reasons for its actions. Finally, finding no evidence of threats or promises of benefits, the Hearing Examiner also recommended that Rutgers "Vote No" campaign and its actions after the election in forming focus and advisory groups were not evidence of union animus and were protected by free speech rights under Black Horse Pike.



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Appearances:

For the Respondent, Office of University Counsel
(John B. Wolf, of counsel)

For the Charging Party, Weissman & Mintz, attorneys
(Mark A. Rosenbaum, of counsel)

**HEARING EXAMINER'S REPORT
AND RECOMMENDED DECISION**

On December 1 and 31, 1997 and February 25, 1999, the Communications Workers of America, Local 1031 (CWA or Charging Party) filed a charge and amended charges (C-1 and C-3)^{1/} against Rutgers, the State University (Rutgers or University), alleging violations of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act), specifically 5.4a(1), (2) and

^{1/} Record references are as follows: C- Commission exhibits; CP- Charging Party's exhibits, R- Respondent's exhibits; and J- joint exhibits.

(3).^{2/} The original charge alleged that Rutgers engaged in a pattern of conduct which interfered with the formation and existence of the Administrative Organizing Committee of CWA (AOC) and discriminated against three individual members of the AOC, Maureen D'Arcy, Jane Chepitch and Scott Randolph because of their organizing efforts between 1995 and 1996.^{3/} CWA contends Rutgers discriminated against these individuals by removing significant responsibilities from D'Arcy, eliminating Randolph's and Chepitch's positions and laying them off and not considering Chepitch for other vacancies.^{4/}

The first amended charge alleges that on or about July 1, 1997, Rutgers retaliated against Beverly Tarter for her efforts on behalf of the CWA 1995/1996 organizing campaign by reducing her work hours and salary. The second amended charge alleges that Rutgers continued its retaliatory conduct against Tarter and Randolph by failing to interview them for the position of law school admissions director at Rutgers/Newark. CWA contends both applied and were qualified for the

^{2/} These provisions prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act; (2) Dominating or interfering with the formation, existence or administration of any employee organization, and (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act."

^{3/} In November 1997, Chepitch (Docket No. CI-98-27), Randolph (Docket No. CI-98-36) and D'Arcy (Docket No. CI-98-37) also filed individual charges against Rutgers alleging retaliation for their exercise of protected rights based on their individual 1995/1996 CWA organizing efforts. These individual charges were subsequently withdrawn. CWA's charge and amended charge under CO-98-193 included those allegations. In consideration of the withdrawals, Rutgers' agreed to waive timeliness defenses to the Randolph claims and stipulated to same on the first day of hearing (1T16).

^{4/} Both Randolph and Chepitch decided to voluntarily retire.

position.

On October 22, 1998, a Complaint and Notice of Hearing issued on the original charge and first amended charge and the matter was assigned to Hearing Examiner Jonathon Roth. On November 10, 1998, Hearing Examiner Roth recused himself and on November 18, 1998, the matter was reassigned to me. On March 2, 1999, the Complaint was amended to include the second amended charge (C-4) regarding Tarter and Randolph's application for the law school director position.

N.J.A.C.19:14-2.2.

The hearing began in March 1999, but on November 8, 1999, the tenth day of hearing, CWA again moved to amend the complaint seeking to add allegations that Tarter, Chepitch and Randolph unsuccessfully applied for positions at the University between June 1998 and July 1999 for which they were qualified but did not receive appointments because of their union activities. I denied the motion for reasons of administrative efficiency and because it was unduly prejudicial to Rutgers to amend the pleadings so far into the hearing.^{5/}

On November 20, 1998 and March 5, 1999, Rutgers filed Answers (C-2 and C-5) generally denying the allegations that it discriminated against D'Arcy, Chepitch, Randolph and Tarter and asserting separate legitimate business justifications for its various personnel actions.

^{5/} On March 2, 1999, before the hearing started, Charging Party's February 25, 1999 request to amend the complaint adding allegations about one law school position for which Tarter and Randolph applied in October 1998 was granted. At the time of the March 2nd amendment, Charging Party knew or should have known about Tarter's, Randolph's and Chepitch's other job applications in 1998, and should have added these allegations to its February 25 amendment request giving Respondent ample time to interview and prepare its witnesses before the commencement of the hearing.

As to D'Arcy, Rutgers asserts that as the result of a reorganization at the Rutgers/Camden campus, certain of D'Arcy's responsibilities were reassigned and reassignment of these responsibilities had no adverse impact on her.

As to Randolph, Rutgers contends his position was eliminated due to a larger reorganization within the office of university undergraduate admissions. Rutgers denies that its failure to interview him for the law school admissions director position was in retaliation for his activities during the CWA organization drive.

As to Chepich, Rutgers contends that the elimination of her business manager position was also the result of a larger reorganization.

As to Tarter, Rutgers contends that a reduction in her work hours was the result of budget cuts which impacted many areas of the University. It denies that its failure to interview her for the law school admissions director position was in retaliation for protected activities.

Additionally, Rutgers raises three affirmative defenses: the complaint fails to state a claim upon which relief can be granted; its actions were legitimate and based on non-retaliatory reasons; and as to Tarter, the complaint is untimely.

Hearings were conducted on March 8, April 7 and 8, May 3, 18 and 19, July 28 and 29, September 29 and November 8, 1999 and January 14, February 22, March 9 and 15, May 25 and 31, June 13, July 14, August 10 and 17 and November 20, 2000.^{6/} Post-hearing briefs, together with proposed findings of fact, were filed by April 2, 2001, and reply briefs were submitted by May 1,

^{6/} Transcript references shall be 1T- to 21T- respectively.

2001. Based upon the entire record, I make the following:

FINDINGS OF FACT

1. Rutgers is a public employer within the meaning of the Act (1T15).
2. CWA is a public employee representative within the meaning of the Act (1T15).
3. At all relevant times, D'Arcy, Chepitch, Randolph and Tarter were public employees within the meaning of the Act.

Rutgers Background

4. Rutgers consists of approximately 800 buildings on three main campuses – Newark, Camden and New Brunswick. The New Brunswick campus is comprised of five separate campuses including one in Piscataway (19T16). The University employs over 10,000 employees in academic and non-academic positions (11T93).

University Labor Relations

5. Between 1991 and 1999, Rutgers had nine labor unions representing over 7,000 employees (19T6-19T7).^{7/} The administrative, professional and supervisory (APS) staff consisted of approximately 2,500 employees not represented for purposes of collective negotiations (19T8).

Richard Norman was vice-president for administration and associate treasurer from 1991 through 1999. He handled, among other duties, personnel and labor relations (19T5-19T6). Norman was first hired by Rutgers in 1988 as senior vice-president and treasurer. He shared job responsibilities

^{7/} The AAUP represented faculty including, among others, part-time lecturers; two Fraternal Order of Police (FOP) unions represented rank-and-file police officers and superior police officers; two AFSCME unions, one representing blue collar workers and one representing secretaries; one union represented physicians and one represented engineers (19T6-19T7).

with Joseph Whiteside. Those responsibilities included working with the University's operational units such as facilities, the controller's office, police, fire, purchasing and all auxiliary units (housing, dining, student center). Norman's title changed in 1991, but he retained all of these responsibilities and the responsibility for personnel and labor relations was added (19T4-19T6, 19T104). Norman left Rutgers in early 2000 and is currently vice-president for finance and business services at Miami University in Ohio (19T4).

Norman's union dealings were delegated to Gene Ambrose who dealt with the faculty units and Chris Mowry who dealt with the non-faculty units (19T8).

Budget Matters

6. In the mid-1990's, Rutgers' budget was approximately \$1.1 billion dollars (19T8). The budget consisted of four major sources of revenue; student tuition and fees (approximately \$250 million), State appropriations (approximately \$300 million in cash and \$100 million reflected as benefits), auxiliary services (approximately \$180 million) and grants and contracts (19T9-19T10).

There are restrictions on how revenue from sources is spent. For example, student fees and State appropriations support the instructional component of the University budget such as faculty salaries and the libraries. This component represents about sixty percent of the total budget (19T10-19T11).

During the 1990's State appropriations were erratic and inadequate. In three separate years, base appropriations were less than in the previous year, and only in one year did the State fully fund salary appropriations (19T12-19T13). Additionally, there was a direct correlation in those years between inadequate State appropriations and increases in student fees and tuition (19T13-19T14).

However, according to Norman, tuition increases did not cover the underfunding by the State (19T14). Student protests over tuition and fee increases caused the board of trustees to look for other revenues to close budget deficits (19T14). Therefore, according to Norman and Associate Director of Personnel Services David Waldman, from the early 1990's decreased State funding caused a series of budget cuts impacting all departments of the University, heralding an unprecedented period of retrenchment and generally causing management to do more with less (11T80, 17T27, 19T12).

For example, in 1992/1993 the University stopped setting aside money for deferred maintenance costs which represented a two to three million dollar budget savings (19T14). Also, the University responded to reduced State funding by reducing personnel costs University-wide. Because faculty were viewed as the core of the University's mission and, in any event, were difficult and costly to remove because the majority were tenured, the APS staff bore the brunt of personnel cutbacks (19T15). Additionally, in 1996, University President Frances Lawrence instituted a program known as the Strategic Resource Opportunity Analysis or SROA. Each department was instructed to return a percentage of their budgets in order to create one funding source to leverage new faculty and dean initiatives aimed at enhancing academic and research opportunities (10T49-10T50, 11T77-11T78, 17T15, 17T26, 17T75-17T76, 19T27-19T28).

As a result of budgetary constraints and the SROA initiative, the 1990's triggered numerous and various management reactions including studies to review the delivery of departmental services, redeployment of resources, reduction in staff size and/or reorganization of departments. These studies lead to various staff layoffs (2T24, 11T80, 17T15, 17T30).

7. In June 1993, Norman issued FY 1994 Staff Layoff Guidelines (Guidelines) in response to

reductions in State funding. The Guidelines were to ensure that the University acted responsibly toward those employees being laid off (CP-34, 11T80). According to Associate Director of Personnel Services David Waldman, however, the layoff guidelines had broader application and were also used by the division of personnel as a general guide in situations where layoffs were not the direct result of budgetary constraints but resulted from initiatives such as SROA or general reorganizations (11T50-11T51, 11T88-11T89).

During these years, the division of personnel services assisted a number of long term employees who were laid off by securing them new positions, both within and outside the University. The number varied from a handful to 50 employees depending on the budget and any specific organizational needs (11T70). According to Waldman, the success rate in placing laid off employees was nowhere near one hundred percent and varied depending on the type of employee (11T82).

The Guidelines directed, among other things, which employees to lay off, and that “[t]he basis of any layoff decision must be a judgement by the appropriate vice-president or provost regarding which positions can be eliminated with the least consequence to the unit’s ability to perform its most critical functions” (CP-34). Where there were several employees performing the same or similar functions the vice-presidents or provosts were instructed to base their decision on length of service in the title and at the University, quality of service as documented in the employee’s performance assessment reviews (PAR), the employee’s capacity to perform a wider range of activities necessitated by the cutbacks and the University’s affirmative action policy (CP-34).

The Guidelines required job placement assistance and preference in selection for other University job openings be provided to those regular employees laid off. Each vice-president and

provost was directed to make every reasonable effort to place these employees within their units in other positions for which they were qualified even if it required a brief training period. They were also advised, however, that the Guidelines did not require them to fill positions with laid-off employees who were not qualified (CP-34).

According to Waldman, the personnel's practice in filling vacancies was to advise the hiring authority to select the best possible candidate (11T47). If an employee's career history at the University put them in a unique position to be the most qualified, personnel would be supportive of that candidacy, although it was not their practice to give preference to career employees over other qualified candidates (11T47).

The Guidelines also addressed the situation where the vice-presidents or provosts were unsuccessful in placing the regular employee within their own units. The Guidelines instructed personnel offices on other campuses to assist in identifying potential positions elsewhere and directed the University hiring authorities to give serious consideration to candidates referred by personnel if they possessed the relevant knowledge, skills and abilities to perform the job (CP-34). The hiring authority was to notify personnel if the laid off employee was not selected (CP-34). In reality, according to Waldman, personnel rarely, if ever, got feedback from the departments and did not have the authority to compel the departments to respond to inquiries about candidates (11T68-11T70).

As to notification periods prior to layoff, the Guidelines required a notification period tied to the number of years of service and also defined entitlement to compensation after layoff notification (CP-34, 11T82, 11T90). The compensation period did not preclude requesting an employee to vacate a position immediately where there were security concerns, e.g., employee has access to data files, or

where it was judged to be in the best interest of the department's restructuring process (11T58, 11T82, 11T91, 19T110). For instance, if there was a mid-year budget cut, layoffs were effectuated swiftly to immediately reduce the rate of expenditures (19T109).

Norman, however, explained that in his experience layoffs in general and layoffs of long-term employees were not common occurrences nor was it usual practice for employees to be asked to leave immediately upon layoff notification (19T111-19T112).

8. The division of personnel services had responsibility University-wide for policies and procedures related to personnel issues (7T39-7T40). However, each campus was self-administered in terms of making personnel decisions under the authority of the provosts who acted as the chief operating officers of each campus (19T16, 19T100). Newark and Camden had separate personnel offices. The Camden personnel office ceased to exist sometime in the 1990's (7T39). Also, in September 1998, the division of personnel services became the division of university human resources (7T40, 7T49).

Therefore, although the labor relations functions and union issues were directed centrally and were not a local campus responsibility, personnel decisions resulting from the changes prompted by budgetary and SROA concerns impacting individual departments were addressed locally, e.g., on the Newark, Camden or New Brunswick campuses – and not through central administration (2T18, 2T105, 11T59). Only if there was an unusual request which went beyond the bounds of normal practice, e.g., a higher than normal salary request to fill a vacant or new position – would the local campus consult with the central administration, specifically Norman's office (19T17, 19T100).

Additionally, layoffs or reorganizations would come to the attention of Norman's office in terms

of their overall budgetary impact but not as to the impact on any particular individual (19T101, 19T120). Norman would have an opportunity to comment, but usually did not, leaving the decisions on layoffs and reorganizations to those who were running the various departments (19T50-19T52, 19T103). For instance, Norman had no decision-making role in the 1997 reorganizations in the Camden housing and business offices affecting D'Arcy; in the New Brunswick offices of graduate and undergraduate admissions affecting Tarter and Randolph; and, in the Newark FASN office of the dean affecting Chepitch (19T29-19T30, 19T32-19T33, 19T35, 19T38-19T39, 19T102-19T107, 19T114).

The Administrative Assembly

9. The Administrative Assembly (Assembly) was organized in the 1970's as a response to the unionization movement and is a representative group of non-organized administrators at Rutgers which acts as an advisory body for the University president. The Assembly consists of representatives elected by eligible members of the APS staff who meet periodically for the purpose of discussing issues of general concern to their constituency. The University's president may, from time to time, seek or receive the advice of the Assembly on issues and participate in the formulation of University policy as it affects the APS staff (R-17, R-18, 4T76, 4T79, 6T97, 8T5, 11T18). The Assembly's bylaws were adopted in 1987 and approved in 1988 (R-18).

Each campus has proportional representation in the Assembly depending on staff size. The Camden campus has proportionately the smallest group of representatives (2T205-2T207). The University president designates one person to represent the president's office in the Assembly (2T209).

In the 1990's, Vice-President Norman was University President Lawrence's liaison to the

Assembly (19T29, 19T48-19T49). Through his participation in the Assembly, Norman got to know D'Arcy, Tarter and Chepitch (19T29, 19T34, 19T36, 19T53). Norman only met Randolph for the first time at the Commission's exploratory conference in this charge (19T31).

The Assembly usually meets in New Brunswick, but once a year meets on the Newark and Camden campus. In the spring of 1995 there were over 1,200 employees eligible for Assembly membership. The Assembly consisted of 55 representatives (4T21, 4T27).

In 1993 D'Arcy became a representative to the Assembly (2T204-2T205). Eventually, in 1995 she was elected Assembly president and was reelected in December 1995 for a second term (2T208, 4T125).

10. In 1995, Director of Personnel Services Stephen Otzenberger was Norman's designated representative from the University president's office to the Assembly. Otzenberger had been Norman's liaison to the Assembly from 1990 (6T97). On one or two occasions, Associate Director for Personnel Services Waldman and Associate Director Pat McFadzean^{8/} substituted for Otzenberger (R-28, 4T139-4T140, 11T19, 11T62). Otzenberger reported directly to Norman (2T209, 4T118-4T119, 19T29, 19T48, 19T75-19T76).

In his role as liaison, Otzenberger attended meetings of the Assembly and, occasionally, its executive committee (6T62). Basically, Otzenberger communicated between Norman, the Assembly and the University president, although his reports were sent directly to Norman, not President Lawrence (6T62, 19T79). Norman also received copies of Assembly motions (CP-3, 2T218-2T219).

^{8/} Pat McFadzean's name was also spelled McFadden in the transcripts. I have used the spelling from the Assembly minutes (R-28).

D'Arcy usually checked with Otzenberger before sending anything out on behalf of the Assembly, although he had no authority to veto its dissemination nor did he ever prevent the distribution of any mailing (2T217-2T218, 5T14, 5T17, 5T20, 6T5, 6T47, 6T79-6T82). Otzenberger's office maintained a list of Assembly members and generated mailing labels for the Assembly mailings (6T81-6T82)

D'Arcy had a cooperative relationship with Otzenberger and Norman with respect to her activities on behalf of the Assembly (4T22).

11. In 1995, the Assembly delegates were concerned with changes being made to the health benefits package as proposed by Governor Whitman (CP-2). The Assembly's salary and compensation committee researched the issue to devise a negotiation's proposal to submit to Norman as part of a salary and compensation package for that year (CP-1, 2T209-2T212, 2T215). A newsletter was sent to all administrators at the University followed by a letter writing and telephone campaign to inform the University at-large of the APS staff's concerns about the health benefits issue (2T15).

In March 1995, Otzenberger received an e-mail from Registrar for the Graduate Schools Richard Bird, a long time member of the Assembly. Bird observed that "... the sentiment for unionization is gathering momentum like a runaway locomotive" (CP-41). Otzenberger thanked Bird for giving him a "heads-up" (6T100-103). Otzenberger sensed that Bird was opposed to the unionization effort (6T106).

Bird had been registrar for graduate schools and summer sessions on the New Brunswick campus since 1966 (8T4). From 1972 to 1998, he was a member of the Assembly and in March

1995 was chair of its grievance committee (8T7, 8T74). He knew Otzenberger from his early days of employment at the University and their offices were adjacent to each other (8T7, 8T30).

Bird sent the e-mail to Otzenberger because he felt the University was not doing enough to protect the APS staff from the Governor's intention to have them share health insurance costs. He felt that if the University was seen as uncaring on this issue, the employees would seek to organize for their own protection (CP-41, 8T8, 8T75).

Bird initially participated in Assembly discussions about unionization in 1995 and was, at first, ambivalent on the issue (8T10). However, by the time he sent the e-mail to Otzenberger in March 1995, Bird was opposed to unionization (8T10).

12. On April 10, 1995, D'Arcy wrote a letter which was printed by the Assembly and distributed to all APS staff and upper level administration, including President Lawrence and Vice-President Norman (CP-1, 2T215-2T216). Otzenberger reviewed the letter before it went out and approved its distribution (CP-2, 2T217, 5T14, 6T7). D'Arcy urged the University not to take advantage of the APS employees' non-unionized status but rather to provide the same benefits package negotiated by the unionized employees so as not to "exact a penalty on us for our status as non-union employees" (CP-1).

After the D'Arcy letter circulated, interest in unionizing the APS employees grew (2T217). The health benefits issue was the catalyst for the CWA organizing drive (4T79-4T80, 4T113).

13. Throughout 1995 and 1996, the University shared the APS staff's concerns about health benefits and urged an equitable resolution which did not unfairly single out APS employees for different treatment than unionized employees (4T81). Rutgers monitored legislative developments and lobbied

for equal treatment on this issue (4T104). On May 9, 1995, President Lawrence sent a letter to the members of the appropriations committees in both the State Assembly and Senate urging equitable treatment for all employees on the issue of cost sharing of health insurance premiums (R-22A, 19T18-19T19, 19T71).

In response to President Lawrence's efforts at a May 11, 1995 Assembly meeting, a motion was passed thanking University President Lawrence for his support (R-19, R-22, R-22A, R-23, 4T85). Subsequently, Norman sent copies of the Lawrence letter to all APS staff and reiterated the University's commitment and efforts on behalf of its employees on this issue (R-22).

The University's commitment to equitable treatment in cost sharing continued into 1996 (R-23, R-48, R-51). When Governor Whitman signed into law legislation making cost sharing of health benefits a negotiable subject for unionized employees and permitting employer's to have non-unionized employees participate in cost sharing consistent with negotiated agreements for unionized employees, the University temporarily paid premiums for APS employees until contracts were settled with unionized employees (R-23, 4T109-4T111, 7T87-7T88). After the contracts were settled, non-unionized employees were not required to make retroactive payments for health insurance premiums (4T112, 7T65, 7T87-7T88).

On May 13, 1996, Norman sent a letter to all employees eligible for the State Health Benefits Plan announcing the changes resulting from the Governor's legislation (R-23). The letter reiterated Rutgers' position that all its employees would be treated equally with regards to health benefits and announced that the University would temporarily pay premium deductions for its non-unionized employees enrolled under the traditional health plan (R-23). It also provided an opportunity to those

enrolled in the traditional plan to change plans (R-48). On June 11, 1996, Otzenberger sent a letter to employees who had switched out of the traditional health plan to avoid cost sharing providing them with an opportunity to reverse their positions (R-51, 7T89-7T90).

In general, both before and after the 1995 CWA election, Rutgers treated APS employees and unionized employees equally with respect to health benefits (7T101).

14. In June 1995, D'Arcy, together with the Assembly's salary and compensation committee, enlisted the University's assistance in setting up a panel discussion for APS employees to discuss issues of salary and compensation as well as to address health benefits concerns. Otzenberger assisted D'Arcy in organizing the University-sponsored forum (7T66-7T67). Rutgers paid for the printing and distributing of a flyer announcing the forum (7T69).

The forum was held on June 22, 1995, ten days after the CWA filed its representation petitions (Docket Nos. RO-95-221 and RO-95-222) seeking to represent the APS employees (R-21). D'Arcy was the moderator and spoke, although she did not discuss the CWA or her own feelings on unionization (7T103-7T104). The panel consisted of representatives from the State and University Administrations (R-21). The forum was well attended with approximately 100 attendees. D'Arcy was grateful to the University for its assistance in organizing the forum (R-21, R-24, R-47, 4T96, 44T101-4T102, 4T116, 7T66-7T67, 7T74).

Vice-President Norman spoke briefly at the forum and in response to a question concerning the CWA explained that the University had received a faxed representation petition but was not yet served formally and that there were a lot of question which needed to be resolved by the Commission (R-47, 7T45).

15. During the period March through June 1995, D'Arcy felt she and Norman were trying to present a united front on health benefits issues at the same time recognizing that they had some differences of opinion (2T221). Otzenberger told D'Arcy that Norman felt it was important for the Assembly to align itself with the University's efforts on the health benefits issue and not go off on its own (6T7). According to D'Arcy, she, Otzenberger and Norman were good friends during this period (2T224). For example, in an e-mail to Otzenberger in March 1995, D'Arcy described Otzenberger as a "good, honest, decent person" who it was "a pleasure to work with" (R-25, 4T118). Despite University support on the issue of health benefits, D'Arcy was unable to convince APS employees that the State was the real adversary not the University. In another March 1995 e-mail to Otzenberger, D'Arcy solicited his and Norman's assistance to "put the brakes on" a situation which she described as a "runaway train" leading to a demand by APS staff for union organizing. She requested "some good, solid news to ease people's fears and slow the pace." D'Arcy e-mailed:

. . . The phone calls are being made, the letters are being written, but so many do not believe that is enough. I have received dozens of calls from all over the University with a call to organize. When I try to explain that our adversary right now is the state [sic], not the University, people are not hearing me. The only answer I can come up with is to resign from the assembly [sic] so that I don't hurt the relationship that has been established over the years. Then, as an individual, I can thoroughly investigate whether organizing is in our best interests and as an individual, make my recommendations known. That would leave the assembly out of it, right? The president would not be motivated to disband the group, and in the event that an organizing effort does or does not materialize, the Assembly will be held harmless. Its too bad so much has happened in these first 100 days. I was very motivated and excited about the possibilites [sic] of a stronger, more successful interaction with your office and the VP. I am not sleeping well. I don't know what action I should take. For once, I'm not clear on what the right thing to do is [R-26]

In response to this e-mail, Otzenberger telephoned D'Arcy (7T56). As was his custom, he took notes of the conversation (R-45). His notes indicated he emphasized "... that we value her in the role of Assembly president, but that it has to be her decision. Also, [I] discussed what was appropriate for Assembly committee and what was appropriate to be done as individuals rather than Assembly rep's" (R-45, 7T57-7T58).

Despite her indecision, D'Arcy decided not to resign as Assembly president. She remained active in the CWA organizing drive while maintaining her status as president before, and after, the 1995 CWA campaign and election and for months afterward until she resigned her presidency on August 21, 1996. According to D'Arcy, even though she was the recognized leader of the 1995 CWA campaign, no one in the administration prevented her from maintaining her dual roles or suggested that she resign her Assembly presidency (4T120-4T121, 4T123-4T127, 4T166).

16. On May 1, 1995, Norman received a copy of an Assembly motion passed during the April 13, 1995 meeting. The motion stated that the Assembly "endorse[s] and support[s] the unionization efforts of the CWA and encourages its members to sign signature cards" (CP-3, 2T220). The June Assembly newsletter, which was sent to all administrative staff and T-coded staff (top administrative employees), also published the motion supporting the CWA unionization effort (CP-4, 2T220).

The June newsletter also contained a letter from Norman which responded to the Assembly motion to support the CWA organizing effort (CP-4, 7T54). Norman wrote:

The Administrative Assembly is a representative body made up of 55 individuals from across the University who represent 2,300 employees. At its meeting on April 13, 1995, 37 of

these representatives were present. 18 members voted to encourage the Communications Workers of America (CWA) to come to the Rutgers University Campus for purposes of organizing Assembly-eligible employees. 16 representatives voted "no" and 3 representatives abstained. So that the vote of 18 individuals will not speak for a body of 2,300 people, I would encourage each of you, as an Administrative Assembly-eligible employee, to learn as much as you can about what union membership would mean to you individually and as an employee of Rutgers, The State University of New Jersey. Union representation can have a significant impact on each employee in the affected group. Because of this impact, it is important for you to understand the facts related to this action. The University will, in the near future, provide further information regarding this issue. [CP-4]

At that time, D'Arcy continued to have a cooperative relationship with Norman and Otzenberger regarding her Assembly activities and had no objection to printing Norman's letter (CP-4, 4T22, 4T99).

17. Also in response to the April assembly motion endorsing unionization, D'Arcy, Norman and Otzenberger met in May and developed written guidelines. The guidelines were established to remove the Assembly "from the matter of the CWA organizing campaign" (CP-22, 3T18, 4T87, 4T134-4T135, 6T48, 7T54-7T55). D'Arcy requested that Otzenberger put the guidelines in writing (6T9, 6T87). By letter to D'Arcy dated May 11, 1995, Otzenberger summarized "appropriate activities of Assembly representatives who wish to participate in the organizing activities of the CWA" (CP-22). The guidelines were as follows:

1. The underlying theme is that University resources, including the names "Rutgers" and "The Administrative Assembly", must not be used for or affiliated in any way with the organizing campaign.

2. None of the organizing expenses should be paid from the Assembly's budget, including invitations to "informational sessions" which will feature speakers from the CWA.
3. Assembly mailing labels may not be used for CWA organizing activities, including invitations to "informational sessions". The CWA can request mailing labels directly from the Division of Personnel Services, for which there will be a charge to offset the costs in producing the labels.
4. The organizing campaign should not be mentioned, discussed, or promoted in any Administrative Assembly publications or communications to Assembly-eligible staff, including "The Administrator".
5. Organizing activities should not be conducted on work time.
6. The bottom line is that the Administrative Assembly should be removed from the matter of the CWA organizing campaign. [CP-22]

The May 1995 letter then expressed the "hope the [guidelines] are helpful in your efforts to maintain the appropriate separation between the Administrative Assembly activities and the CWA organizing campaign" (CP-22). Norman was comfortable with the campaign guidelines, however, he continued to have concerns about D'Arcy's dual roles because he felt that it was a difficult balancing act for her (19T48-19T49, 19T73).

Although this was not the first time the issue of union organizing and the Assembly's role was discussed, this was the first time guidelines were reduced to writing (6T63, 6T89). According to Otzenberger, the guidelines are still in place regarding the Assembly and union organizing activities (6T89, 6T121).

In the June 1995 newsletter which contained highlights of the May 11, 1995 Assembly meeting, under the subheading "President's Report," D'Arcy reported about her meeting with Norman and

Otzenberger and the development of written campaign guidelines for Assembly members who participate in the CWA union organizing activities. The report further elaborated that since the Assembly was an arm of the University, "any union organizing activities will be kept separate from Assembly business" (CP-4).

The concerns triggering the campaign guidelines were not unique to this particular campaign but had surfaced over the years during other organizing efforts (6T66). Otzenberger discussed the issue with the past Assembly president Elena Buchanan. He expressed the University's view that organizing activities should not be done at Assembly meetings (6T88-6T89, 7T52).

Initially, Norman's instructions to Otzenberger when he first learned of the CWA initiative was not to interfere with the organizing effort but to keep the "ground rules" straight, namely that "... organizing activity should not occur on company time or as part of the administrative assembly's role as ... an arm or a function of the University" (6T66, 6T87-6T89). Norman's attitude toward the organizing effort, as he expressed to Otzenberger, was just "... let's just see what happens" (6T65). Additionally, in 1994 when Otzenberger first heard Assembly delegates discussing the subject of unionization, he consulted with Director of Employee Relations Chris Mowry who advised him not to overreact to the discussions, that they were legitimate protected activity as long as organizing was not going on in the Assembly (7T52-7T53). Otzenberger then relayed Mowry's advice to Norman who agreed with it (7T53).

D'Arcy met with Norman and Otzenberger to discuss their concerns and assured them that she could keep the roles separate (CP-4, 2T222-2T223, 3T18-3T19, 3T24, 4T120-4T121, 4T124, 6T10, 7T55, 11T64, 19T46).

There is a dispute over who was bound by the guidelines. D'Arcy understood the campaign guidelines, which prohibited discussion of union matters by CWA organizers at Assembly meetings, applied equally to the University, herself and other Assembly delegates (3T32-3T33). Otzenberger considered the campaign guidelines to clarify the role and actions that were appropriate for members of the Assembly during a union organizing effort. He testified that at his meeting with D'Arcy regarding the guidelines there was no discussion concerning what activities the University might engage in during the union campaign (6T91, 7T55-7T56). Norman, however, testified that he understood the guidelines to go "beyond D'Arcy" (19T79). Moreover, paragraph 6 of the guidelines appears to be a catchall provision expressing the desire to "remove" the Assembly all together from any organizing activities (CP-22).

Regardless of which section of the guidelines D'Arcy, Otzenberger or Norman emphasized, they were ground rules regarding the role of the Assembly authored jointly by the parties for the conduct of the election campaign. It was binding on D'Arcy, the CWA and the University. I find that Norman and D'Arcy both understood the guidelines to bind more than one individual or organization. It is illogical to assume that the University expected to prohibit pro-union campaigning by D'Arcy and other CWA supporters while, at the same time, allowing others free access to promote the University's "Vote No" agenda in the Assembly, especially since Norman also testified that it was important to him that the University "do things fairly and equitably [during the campaign] . . ." (19T82). Additionally, the guidelines were developed to address the specific concern's about D'Arcy's dual leadership roles as Assembly President and CWA lead organizer. These written guidelines addressed the same concerns from previous campaigns, specifically that organizing activities in the Assembly were

inappropriate.

Cocktail Party Comments

18. In April 1995, around the time the Assembly motion endorsing unionization was discussed and/or passed, D'Arcy attended a cocktail party at University President Lawrence's house. Lawrence introduced D'Arcy to the chair of the University's board of governors stating "... this is the woman who is causing all the ruckus or something like that" (3T36-3T37, 4T162-4T164). The Chair responded "... we all care about Rutgers. We just go about it in different ways" (4T163).

Although Lawrence never specifically mentioned the CWA campaign, D'Arcy understood his comment to refer to the campaign (4T162). Nevertheless, D'Arcy considered this conversation to be friendly, humorous and cordial, not antagonistic or confrontational (3T37, 4T163-4T164).

The Olzewski Document

19. One incident tested the application of the guidelines during the campaign and election (3T22-3T23, 8T23). Charles Olzewski, an Assembly member, approached Bird in August 1995 with an unsigned, six-section document he authored (the Olzewski document) and asked Bird to co-sign it (8T12, 8T80). Olzewski informed Bird that he was writing a seventh section but it was not finished (8T22). The draft listed the reasons Olzewski opposed the union effort, particularly, because conditions were not ripe, the employees would not receive "\$800 a year worth of value from belonging to a union" and union dues would go to promote a political agenda which he did not support (CP-40). Olzewski wrote that these were his personal views, that he was not a part of management nor did he speak for management (CP-40).

At first, Bird agreed to co-sign the document with Olzewski but later changed his mind because

he did not want his name thrown into the controversy, preferring to work behind the scenes (8T12, 8T18, 8T80). Olzewski then suggested that he and Bird approach Otzenberger and Norman to confirm that the document was not illegal or against University wishes or at cross-purposes to the University position on the unionization effort (8T14, 8T91). However, if the University had objected to the document, Bird felt that since it was Olzewski's document, Olzewski would have to decide whether he wanted to disseminate it anyway (8T15).

Although he eventually declined to co-sign the document, Bird supported the sentiments expressed by Olzewski and wanted to see the document distributed. For these reasons, and because Olzewski was experiencing serious health problems which kept him out of work at the time, Bird took the Olzewski document to Otzenberger to ask if the University had any objections to its dissemination (6T135, 7T83, 8T14, 8T91).

When Olzewski first approached him, Bird had no idea whether he (Bird) was eligible to vote in the CWA election (8T80). It was only in late October or early November 1995, that Bird learned from his supervisor, University Registrar Ken Iuso, that he could not attend a meeting with the University to discuss the unionization effort because he was eligible to vote (8T82). Bird telephoned Mowry to confirm Iuso's information and then telephoned Ed Sabol, a CWA representative, to tell him that he was opposed to the unionization effort. Bird was assured by Sabol that his name would be taken off the election eligibility list (8T84). Bird assumed that Sabol followed through because Bird was allowed to attend the meeting and never received a ballot to vote in the election (8T84-8T85).

Bird showed the unsigned, six-part Olzewski document to Otzenberger. Otzenberger indicated he needed to run it by Norman (6T135, 8T29). On October 11, 1995, Otzenberger discussed the

Olzewski document with Norman and took notes of the discussion (R-49, 7T81-7T82). Norman told Otzenberger that the document should not be distributed or discussed at the Assembly meeting (R-49, 6T135-6T136, 19T78, 19T83). Norman's reasoning was that the Assembly was a representative body and should be neither pro- nor anti-union (19T79). Norman wanted things done fairly and equitably (19T82).

Norman indicated to Otzenberger that it would be nice, if under the rules of the campaign, the Olzewski document could be distributed, but in his opinion it was inappropriate for distribution or discussion at the Assembly, nor could anyone in the Administration provide funds for its distribution (6T137, 7T19-7T20, 19T78-19T79, 19T83). According to contemporaneous notes taken by Otzenberger, Norman reiterated these sentiments at a November 15, 1995 meeting with management staff (R-50, 7T83-7T86). Norman told Otzenberger he was concerned that the document was unsigned and indicated that if it were ever to be distributed, it should be attributed to the writer (6T133, 7T19).

Sometime after the October 11, 1995 discussion between Norman and Otzenberger, Olzewski signed the document and added part seven (CP-50). Subsequently, in an e-mail to Otzenberger dated October 25, 1995, Bird confirmed that he had spoken to Olzewski who advised that he "... is willing to be the sole instigator. If that's ok with you all, I'd prefer it that way. BTW [by the way], he has written part 7" (CP-44, 6T130-6T131). Bird testified that he used the term "sole instigator" because he had previously told Olzewski that he [Bird] did not want to be a co-signer (6T136, 8T12, 8T17-8T18, 8T80). He also testified that the phrase "If that's ok with you all ..." referenced his desire to wash his hands of Olzewski's project by not acting as co-signer and had nothing to do with seeking

permission from anyone to do so (8T28). I credit Bird's explanation of the e-mail. It comports with Olzewski's actions in signing the document without Bird and adding part seven. Also, there is no evidence that Norman or Otzenberger involved themselves in the preparation of Olzewski's document or assisted in its distribution.

Bird and Otzenberger describe what Otzenberger communicated to Bird after his discussion with Norman slightly differently. Bird testified that Otzenberger indicated there was no objection to the dissemination of the Olzewski document, but never affirmatively told Bird or encouraged him or authorized him to distribute it nor did he furnish any assistance, financial or otherwise, to distribute the document (8T29, 8T88-8T89). Otzenberger testified that when he met with Bird he told him that he did not think the document should be distributed at the Assembly meeting and that Bird responded that he would not distribute it as part of the meeting but just leave it in the Assembly meeting room (6T129). Whether Otzenberger told Bird he had "no objection" or "not to distribute it in the Assembly meeting," I find both agree that the University refused to provide any assistance to distribute the document and did not tell Bird to distribute it at the Assembly or anywhere else.

Otzenberger took his instruction from Norman who he communicated with on a weekly basis during the campaign (6T139-6T140). Norman's views on the inappropriateness of the distribution or discussion of the Olzewski document in the Assembly, and the Administration removing itself from any active participation or assistance to Bird or Olzewski, was clear and unequivocal.

20. Before the October or November 1995 Assembly meeting, Olzewski approached Bird, explained that he was unable to attend and asked Bird to make the documents available for pick-up at the meeting. Bird left the Olzewski document on the radiator in the Assembly meeting room to be

picked up with various other meeting handouts. It was Olzewski's seven-part document in opposition to the CWA organizing effort (CP-50, 3T62-3T63, 4T152, 4T158-4T159, 6T127, 8T13, 8T23, 8T72).

According to D'Arcy, the document was left on the radiator but not discussed during the meeting until several attendees expressed concern that the document was made available at the meeting. At that point in the meeting Bird acknowledged he had placed it for distribution (4T152, 4T158-4T159). Bird did not initiate a discussion of the document at the meeting (4T159).

21. Following the meeting there was a telephone conversation between Otzenberger and D'Arcy; their accounts of that conversation differ.

D'Arcy contends she called Otzenberger because she wanted "... to discuss what the deal was" with the document (3T22). Otzenberger had not attended the meeting but was represented by another administrator, Pat McFadzean (4T155). On direct examination D'Arcy testified that Otzenberger told her he made the decision to "allow" the Olzewski document to be distributed at the Assembly meeting and that in hindsight it was poor judgment on his part (3T35). On cross examination D'Arcy described the conversation slightly differently stating that Otzenberger acknowledged that when Bird asked him if he could distribute the Olzewski document at the Assembly meeting, he said it was alright (4T155-4T158). D'Arcy was satisfied that Otzenberger did not author it (4T160). D'Arcy contends, however, the document's availability as a handout at the meeting violated guidelines 1, 5 and 6 (CP-22, 3T15, 3T18-3T19, 3T32-3T33, 3T65, 4T157-4T159).

Otzenberger denied telling D'Arcy that he told Bird it was alright to give out the Olzewski document at the meeting (7T91-7T92).

I credit Otzenberger's testimony that he did not tell Bird it was "alright" to give out the document at the meeting. D'Arcy's statement on direct examination that Otzenberger told her that in hindsight it was poor judgment on his part to "allow" Bird to distribute the document at the Assembly meeting is consistent with Otzenberger's testimony that he "allowed" it by not raising any objection when Bird told him he would not distribute it as part of the meeting but just leave it in the back of the room (6T129, 8T89). Otzenberger acted consistently with Norman's instructions to him that distribution and discussion of the Olzewski document at the Assembly meeting was not appropriate nor was Administration assistance, financial or otherwise, to be used (19T79). It appears that what Otzenberger regretted in hindsight was his failure to object to Bird's expressed intention to bring the document and leave it for the Assembly delegates to pick up. Otzenberger, therefore, followed the letter, but not the spirit, of Norman's instructions that the Assembly was a representative body, neither pro nor anti union (19T79). When Norman later learned that the Olzewski handout was made available at the Assembly meeting he did not reprimand Otzenberger or communicate any concern to him that the document was made available (19T83-19T84).

As a collateral matter, I find the Olzewski document does not violate Guideline #1 prohibiting the use of University resources in the organizing campaign. There is no evidence that University resources were used to produce or distribute it. Norman and Otzenberger specifically refused to provide any University assistance to Bird or Olzewski (6T137, 7T19-7T20, 8T29, 8T88-8T89, 19T78-19T79, 19T83).

As to Guideline #5 which prohibits organizing activity on work time, it is not clear whether Bird's bringing the Olzewski document to the meeting for dissemination constitutes a violation. There is

no evidence in the record that attendance at the Assembly constitutes work time.

Bird's and Olzewski's conduct in preparing and distributing the document violated Guideline #6 which states that the Assembly should be removed from the matter of the CWA organizing campaign. Bird and Olzewski knew, or should have known, of the Guidelines' prohibitions because in the June 1995 Assembly newsletter disseminated to all delegates and Assembly eligible employees, D'Arcy wrote about them and explained that "[s]ince the Administrative Assembly is an arm of the University, Assembly members understand that any union organizing activities will be kept separate from Assembly business" (CP-4). The Olzewski document addressed the CWA organizing campaign and, in doing so, breached the rule of maintaining separation between Assembly activities and the CWA campaign.

The CWA Campaign: The Administrative Organizer and Other Mailings

22. Through the spring and summer of 1995 and up until the November 17th mail ballot election and December 1995 ballot count, D'Arcy and others met regularly with CWA representatives. In May 1995, while the campaign Guidelines were being developed, there was a CWA informational meeting held on one of the Rutgers campuses. Otzenberger knew about the meeting from a flyer he received at home and heard about the meeting from Associate Director for Personnel Services Waldman, a member of his staff who attended the meeting. Waldman gave Otzenberger a written report of the meeting (7T61-7T63, 7T105-7T106).

On May 19, 1995, Otzenberger sent Norman an e-mail entitled "Recap of CWA Informational Meeting." Otzenberger summarized the significant points of Waldman's report: (1) approximately 35 people attended the meeting including Chemistry Department Administrator Paul Passaro and Ellen Azevido from career services; (2) CWA claimed to have over 500 signature cards supporting

unionization; (3) the main topic of discussion was cost sharing of health premiums and the disadvantages the APS staff had versus unionized employees; (4) the general sentiment was that the APS staff were second-class citizens; and (5) the campus directory was used as the source for names and addresses to send out the flyers (R-46, 7T62-7T64).

Otzenberger added that:

Apparently there were several times during the hour that the CWA people expressed surprise at the lack of response by "the administration" to the CWA's organizing campaign - sort of like they expected more resistance - but also like they're reading the lack of response as confirmation that the leadership of the University doesn't pay attention to administrative staff issues. [R-46]

23. D'Arcy and other CWA supporters began putting together documents to distribute to the APS staff and others. One of the documents described CWA's dissatisfaction with the AFSCME contract settlement (CP-5, 2T224-2T225, 3T12-3T13). Another document contained pictures of seven individuals, including D'Arcy, Randolph and Tarter, with quotes from each explaining their reasons for voting "Yes" in support of CWA (CP-12, 3T14).

24. As a result of the campaign Guidelines prepared by D'Arcy, Norman and Otzenberger, a separate newsletter was developed and distributed by the CWA organizers called "The Administrative Organizer" (CP-6, CP-6a, CP-7, CP-8, CP-9, CP-10, CP-11, 2T228).

The parties dispute who received the Administrative Organizers. Exhibits CP-6 through CP-11 are copies of several editions of the Administrative Organizer and were admitted for the limited purpose of establishing that certain individuals were engaged in protected activities but not that the newsletters

were received by University management (4T106-4T107)

D'Arcy contends the Administrative Organizer was sent to all administrative staff and upper level administration including T-coded employees up to and including University President Lawrence. She contends that the mailing labels were purchased from the division of personnel services. However, she was not involved in the mailing process. There was no independent corroboration of who, other than Assembly eligible employees, received the newsletter. The one exception was Otzenberger who testified that he received the first edition of the Administrative Organizer and perhaps one other (CP-6a, 6T117, 7T22-7T23).

Otzenberger's office maintained the mailing labels used for the Assembly newsletter, The Administrator, which included the names of Assembly members plus Otzenberger, Norman and Mowry (6T81-6T84). Otzenberger denied providing mailing labels to the CWA as his office had done in the past for the mailing of Assembly newsletters and other material (6T84, 7T59-7T60). Specifically, Otzenberger reviewed the 1994/1995 records kept by the division of personnel services and found no record of mailing labels having been sold to the CWA. He also reviewed his notes from that time period when the campaign started and found that he had discussed the cost of providing mailing labels to the CWA with his staff computer person. Otzenberger talked to that individual and had him review his own records. No record reflected that mailing labels were produced for the CWA (7T59-7T60).

Otzenberger recalled receiving only two mailings from the CWA at his home. One was a copy of the first Administrative Organizer dated May 1995 which announced the CWA effort and listed the organizational committee including D'Arcy, Tarter, Randolph and 24 others. The other mailing was an invitation to a CWA informational session (CP-6a, 6T117-6T118, 7T22). Otzenberger passed the

May 1995 Administrative Organizer on to Norman and Mowry (6T119, 7T23). Norman recalled seeing at least one CWA mailing but did not recall how he saw it (19T49).

Based on the foregoing, I find that CWA did not purchase mailing labels from the division of personnel to use in distributing its newsletters and other literature. Notes taken by an attendee at the May 1995 CWA informational meeting recorded that the campus directory provided names and addresses for mailing out flyers (R-46).

Based on the testimony of D'Arcy and Otzenberger, however, it is not clear which particular individuals received the CWA mailings or whether the CWA's mailing distribution list included anyone in upper level management. The fact that Otzenberger received a couple of CWA mailings does not establish that other management employees received CWA literature. As the liaison to the Assembly, he usually received mailings involving the Assembly.

25. D'Arcy and others were involved in writing articles for and producing the CWA newsletters (CP-6 through CP-11, 3T6-3T9). D'Arcy wrote an open letter in the June 12, 1995 Administrative Organizer (CP-7). Also, Randolph contributed a letter printed in the August newsletter explaining his support for the CWA effort (CP-10, 3T10-3T11). In the October 1995 newsletter, Senior Financial Aid Officer Bernice Lopa, a 39-year employee, and Administrative Assistant Michael Fantina, a nine-year employee, both contributed letters in support of the CWA effort (CP-11).

Seven editions of the Administrative Organizer were sent out between May and October 1995. All but the last Administrative Organizer issued in October 1995, contained a section entitled "Join Us Along with the Hundreds Who Have Already Signed Cards" followed by a list of individuals who had agreed to be public supporters (CP-6, CP-6a, CP-7, CP-8, CP-9, CP-10, 3T6-3T9). The number of

individuals increased with each edition and ranged from 27 in the May issue to 62 in the August 21, 1995 issue (CP-6a, CP-10). According to D'Arcy, individuals who signed cards and were listed in the editions of the Administrative Organizer, as well as others not listed, took leadership roles in the CWA organizing effort (CP-6, 4T64). D'Arcy, Randolph and Tarter were on all these lists. Jane Chepitch's name never appeared. The parties agree D'Arcy was undeniably the most visible and acknowledged leader of the 1995 organizing campaign (6T75, 19T29).

26. The University prepared a chart comparing personnel records of all individuals listed in the various editions of the Administrative Organizer. The names were listed under the section titled "Join Us Along with the Hundreds Who Have Already Signed Card." The chart also included seven CWA supporters whose photographs and statements appeared in a November 1995 mailing. The seven individuals were D'Arcy, Randolph, Tarter, Bernice Lopa, Michael Fantina, Michael Fitzgerald and Jan Morrell (R-106, CP-6 through CP-12, 15T43).

The chart states which CWA mailing an individual's name, picture and/or statement appeared in, and any personnel actions taken between May 1995 through March 1999. Sixty-five individuals were listed. Of these 65, 15 were promoted; nine retired; four were terminated, both voluntarily due to, among other reasons, health conditions and involuntarily; three were demoted either voluntarily or involuntarily; one successfully transferred; two layoffs were due to the elimination of positions by the University (Randolph is listed as a layoff although after notification of his layoff, he opted to retire effective December 1, 1997); and one was reduced from a twelve-month to ten-month position (Tarter's position) (R-106, 15T45-15T49). Thirty individuals, including D'Arcy, had no personnel action taken during the time frame examined (15T55-15T56).

The chart does not list in its analysis of personnel actions a pamphlet which was sent out after the election announcing a continuation of the CWA effort to organize by the Rutgers Administrative Professional and Supervisory Staff Union (RAPSS) (CP-14). I note that there were only three individuals listed in the RAPSS pamphlet. They were the campus coordinators, D'Arcy, Fitzgerald and Morrell, who were also listed in other CWA mailings. They were, therefore, included in the chart's analysis of personnel actions taken between May 1995 and March 1999 (CP-14). Morrell had no personnel action taken during that period. Fitzgerald was a successful transfer applicant in March of 1996 (R-106).

The Filing of the Representation Petition

27. On June 12, 1995, the CWA filed two petitions for certification of public employee representative (Docket Nos. RO-95-221 and RO-95-222) seeking to represent administrative, professional and supervisory employees employed by Rutgers (19T80). I take administrative notice of the following facts:

After a series of meetings with Commission staff agents through the summer and fall of 1995, the parties entered into two consent election agreements both dated October 26, 1995, and approved by the director of representation on November 3, 1995. The agreements defined eligible employees and established the procedure for conducting a mail ballot election.

Under the terms of the agreements the mail ballots were to be mailed to eligible employees on November 17, 1995 and received and counted by Commission staff agents on December 14, 1995.

There were three distinct groups of employees defined by the parties as appropriate units. The largest group consisted of approximately 1,600 non-faculty, non-professional administrative employees.

A smaller group of approximately 150 non-faculty professional employees were identified, entitling them to a professional option vote on whether they wished to be included in a group with non-professional employees. N.J.S.A. 34:13A-6(d). The third group of eligible employees consisted of 274 non-faculty, professional, primary level supervisors. Each group included only individuals who were at or below salary range 29.

28. Norman became aware that Chepitch and Tarter were supporting the CWA effort after the representation petition was filed when they attended meetings between the CWA, the University and Commission staff agents to discuss the appropriate unit and other election details (19T34, 19T38-19T39). Norman knew that D'Arcy was CWA's principal organizer because she told him (19T29). Norman had no knowledge that Randolph was a CWA supporter until after Randolph was laid off in May 1997 when his office was cleaned out and CWA literature was removed (19T32). Norman met Randolph for the first time at an exploratory conference with a Commission agent after the filing of this charge (19T31).

The University Campaign

29. Norman was the principal representative of the University during the 1995 CWA organizing drive (19T17, 19T70). He spearheaded the University's campaign with the assistance of Director of Personnel Services Stephen Otzenberger, Bob Kelsey who worked for Norman, Director of Employee Relations Mowry and Associate Director for the Division of Personnel Services Waldman (6T11, 6T93-6T94, 6T140, 7T12-7T14, 7T53, 11T17, 11T21). Approximately ten percent of Norman's time was spent on this effort, because among other activities, Norman was also handling negotiations for the AAUP and AFSCME units (19T17-19T18, 19T51).

Norman consulted only minimally with President Lawrence during the campaign. Generally, President Lawrence delegated administrative responsibilities to Norman and expected him to carry them out on his own (19T70-19T71).

Norman's primary concern during the campaign was that the University "do things fairly and equitably . . ." (19T82). However, Norman told Otzenberger that his job was to persuade employees to vote "No" to unionization (7T16). He wanted the APS employees to remain non-aligned (6T94, 6T116, 11T20, 19T70-19T71).

30. Mowry and her staff were responsible for negotiation and administration of staff union contracts and for the development and implementation of personnel policies affecting unionized and non-unionized employees. Mowry reported to Vice-President Norman (6T77-6T78). On July 3, 1995, Mowry sent a memorandum entitled "Communication Workers of America (CWA) Representation Petition" to vice-presidents, provosts, deans, directors, department chairpersons and others concerned (R-48). The memorandum provided an overview of the Commission's representational process and was intended to answer questions being raised about that process (R-48, 7T77-7T78).

31. In August 1995, Norman sent a memorandum to other vice-presidents, provosts, deans and directors addressing employee complaints about being approached during working hours by CWA representatives to sign cards. Norman advised the vice-presidents, provosts, deans and directors that "... CWA representatives may not interfere with the work of our employees, and they should be asked to leave the work site where employees are performing work" (CP-23).

In September 1995, Norman sent a memo to this same group alerting them to the scheduling of

meetings with him to discuss the CWA organizing effort and how “to properly prepare employees to vote in this election” (CP-24). Norman felt the meetings were critically important to the University’s educational effort “. . . to properly prepare employees to vote in this election” and requested their cooperation in scheduling the meetings (CP-24).

On September 28, 1995, in a CWA update to all vice-presidents, provosts, deans and Administrative Assembly eligible staff, Norman responded in writing to questions about the University’s position regarding the status of the CWA petition and the pre-election campaign rhetoric. He explained that the issues surrounding the timing of the election and the eligibility of employees to vote had not yet been resolved and until that time the University could not respond to inquiries. Norman also explained that any response to pre-election campaign rhetoric would be premature, but that the CWA literature distributed in the spring and summer of 1995 was to be expected when a union attempts to organize non-union employees (CP-25).

Norman also addressed the CWA emphasis on health benefits as it concerned the APS staff. He responded that the State Health Benefits Program is available without distinction to eligible employees whether union members or not. Norman stated that “. . . it is the University’s unambiguous position that all of our employees -- union and non-union alike -- should continue to be treated in the same way with respect to health insurance benefits” (CP-25) [emphasis in the original document].

Finally, Norman wrote:

. . . the University is by no means anti-union. As you know, we have many long standing, sound working relationships with nine different bargaining units. We understand that not all is perfect, but we sincerely believe bringing another union to the University is not the answer to some of our problems. Dealing with issues, and with one another

directly and openly will go a long way in making this institution even stronger and healthier, and one with which you can continue to be associated.

In the final analysis, when the election takes place, it will be your election - not ours, nor the CWA's. Only you can decide what is best for you and your families. [CP-25]

32. Norman hired outside consultants to advise him and the managers on the “dos” and “don’ts” of a union campaign. On several occasions Norman met privately with the consultants. President Lawrence attended one meeting. Additionally, two of the consultants met once with approximately seventy-five managers from throughout the University to advise them of proper campaign conduct (19T60-19T63). Also, the consultants met once or twice on various campuses with smaller groups of management employees to discuss permissible conduct during the campaign (6T94, 7T14-7T15, 11T21). Waldman attended one meeting with the consultants and described it as “. . . basically a training session to help advise about the rules of engagement . . .” and answer questions (11T39-11T40). Corinne Webb, associate provost in Camden while the 1995 CWA campaign was conducted, also attended a meeting and described it as basically instructional as to what they could and could not do during the organizing effort (20T65).

Norman did not seek the consultants’ advice on any continuing CWA organizing efforts after the election (19T68).

33. On November 2, 1995, Norman held a meeting with upper level employees to discuss the CWA efforts, the University’s position on the organizing campaign, the role to be played by those in attendance at the meeting in communicating with employees and answer any questions they might have

(CP-42). Otzenberger attended the meeting and understood the purpose of the meeting was to help managers understand how to conduct themselves appropriately during the campaign and election (6T109-6T110).

Associate Dean for Administration Gerald Warshaver at the Faculty of Arts and Sciences Newark (FASN) also attended the meeting; it was clear to him and others in attendance that the University “would prefer that the vote not end up with the Union” (16T71). However, what he remembered in particular was being advised that if the attendees got into a discussion with the employees about the University’s position on the CWA organizing effort, they were not to make any promises (16T70).

On November 15, 1995, a second meeting with a smaller sub-group of managers who had been invited to attend the November 2 meeting met with Norman and the consultants on the Busch campus (CP-43, 6T114). Otzenberger attended the meeting and took notes (R-50, 7T83). His notes reflect that Norman wanted them to urge eligible employees to vote, discussed the identity of the University’s official election counters, described a mailing to be sent before the election urging voters to follow ballot instructions carefully, explained the professional option suggesting a “no” vote on the two questions, explained the significance of the “24-hour rule” which prohibits meeting with employees as a group before ballots are sent, and stated that Norman could not mail out “Charlie O’s” papers (R-50, 7T83).^{9/} At the meeting, Norman also discussed other topics related to health benefit concerns and

^{9/} See generally previous section entitled The Olzewski Document for discussion regarding the November 1995 Assembly meeting and Richard Bird’s distribution of Charles Olzewski’s handout opposing the CWA campaign effort.

how to answer employee questions as to their eligibility to vote in the election. Additionally, he reviewed CWA settlements in State units versus what other unions generally had negotiated (R-50, 7T86-7T87).

34. Between October and November 1995, in a series of mailings to employees who were eligible to vote, Norman provided reasons it was in the employees' best interests and urged them to vote "NO" in the CWA election (CP-26 through CP-32).

On October 27, 1995, Norman announced in a University mailing to eligible employees the details of the secret mail ballot election to be conducted between November 17, 1995 and December 14, 1995. He explained the composition of the two voting units: Unit 1 consisting of supervisory employees at range 29 and below and Unit 2 consisting of non-supervisory employees at range 29 or below (CP-26). Norman informed the employees that between "now and November 17" the University would be notifying those who are eligible to vote of the procedures and "... [would] specify the logical reasons why we feel it is in your best interest to vote "NO" against this union" (CP-26).

Then, on November 2, 1995, Norman wrote to eligible employees at their home addresses to provide information regarding the upcoming election and urge them to mail in their completed ballot once they receive them because "[o]nly if you vote, do you have a say in things . . . [since] the election will be decided by a majority of the votes cast . . ." (CP-27). He wrote that "... Rutgers is not at all perfect, but I am not convinced this union is the best way to improve your working environment" (CP-27).

In this memorandum he also reminded them that the election is secret ballot and therefore no one would know how they vote nor were they obligated to vote for the union if they signed a union card

or attended a union informational meeting (CP-27). Next, Norman stated that:

Despite any promises the CWA has or will make – there is only one thing you may be sure of – if the CWA is successful in organizing our administrative and supervisory employees they (CWA) have the potential of collecting over 1 million dollars annually in union dues, fines and assessments.

Rutgers University is and has always been committed to respecting the interests of our administrative and supervisory staff members, both as individuals and as employees. The University will respect your legal right to refrain from or engage in union activities.

I strongly believe that our University can best be served by maintaining a non-union administrative and supervisory work force. I am confident we can continue to work together without an outside labor union. I urge you to vote “NO”. [CP-27]

In his next mailing dated November 10, 1995, Norman addressed two concerns he felt deserved special attention – health benefits and negotiations – and attached a fact sheet answering employee questions on various topics pertaining to the election (CP-28).

On health benefits, he again summarized the University’s position that the State Legislature controlled payment of health benefits for public employees and made no distinctions between unionized and non-unionized employees. Additionally, he explained that State-wide units represented by AFSCME, IFPTE and CWA had already agreed to cost sharing by their membership and that, in any event, Rutgers was committed to treating all employees equitably without regard to union status (CP-28).

Regarding negotiations, Norman pointed out that union membership does not automatically guarantee substantial pay increases, better benefits or changed working conditions because the

University's only obligation is to bargain in good faith. Therefore, "...[i]f the University refuse[d] to agree to the union demands, the union's only choices are to give up the demand, modify it or consider an illegal job action" (CP-28).

The fact sheet attached to this mailing posed a series of questions and provided answers to each, including whether with union employees would get promised benefits or a different compensation plan. The sheet explained that benefits could be increased, decreased or remain unchanged depending on the results of negotiations, adding that a different compensation plan could be negotiated substituting a performance-based compensation plan for the current across-the-board increment adjustments (CP-28).

Additionally, on the issue of whether a union could guarantee job security, the sheet advised that employee job security could only be ensured if the University continued to provide its services cost effectively to its constituency and employees fulfilled their job responsibilities. It explained, that "... [w]ith or without a union, employees were still subject to discipline or discharge for breaking the University's rules or failing to perform their job(s) in a satisfactory manner. The University will always retain the right to reduce its workforce when necessary" (CP-28).

Finally, in answer to the question "[w]ill it cost me anything to belong to this union?" the sheet pointed out that employees would be committed to pay dues, initiation fees and possibly fines (CP-28). The fact sheet set out a union dues schedule and on the issue of possible fines quoted sections from the CWA's Constitution, Article XIX entitled Charges Against Members. It then suggested that if the employee had any questions regarding union rules or bylaws he/she should contact the CWA directly (CP-28).

In Norman's next mailing on November 13, 1995 to employees eligible to vote in the election, he wrote:

If I were eligible to vote in this election I would vote NO. I feel the cost to me for the union membership would exceed the benefits I might derive, would not materially improve my work environment, or make Rutgers a better place for me to work.

Attached to this mailing was an article from The Trenton Times outlining the CWA contract settlement with the State of New Jersey (CP-29). The article highlighted certain contract provisions including a two-year salary freeze and cost sharing for those in the traditional health care plan (CP-29).

On November 16, 1995, the day before the ballots were mailed, Norman sent eligible employees a memorandum with basic information about the Commission election process and encouraged them to vote no matter how they intended to vote (CP-30). D'Arcy felt the information was accurate (5T129).

On November 17, 1995, the day ballots were mailed, Norman sent a memorandum to the employees providing answers to three of the most asked questions about the unionization effort:

Q. If I'm not interested in the union, why should I bother to vote?

A. Because the election will be decided by a majority of those who actually vote. For example, if 500 employees are eligible to vote, and only 100 actually vote, the CWA could win with only 51 "YES" votes. They would then represent everybody in the voting unit – those who vote for them, those who vote against them, and those who do not vote.

Q. If the CWA doesn't win this election, when can we vote again?

A. PERC rules provide that after waiting 12 months you are permitted to have another chance to consider the unionization question.

Q. What happens if we vote the union in and after a few months, we decide that we made a mistake?

A. It's a lot harder to get a union out than it is to get it in. Under PERC rules, if a union is elected as your representative and a contract is negotiated, and you then decide it was a mistake, you are barred from getting rid of the union for the length of the contract, up to three years. Then you have to get a petition signed by 30% of the employees and file it with PERC. A majority vote would then be required to vote the union out. [CP-31]

Norman ended this last communication with the admonition that it was critically important that the employees exercise their right to vote so that their future would not be decided by others (CP-31). He wanted to encourage a large voter turnout so that the election results would be representative of the population eligible to vote (6T144).

Just before the election, the University also attached a message on employee pay stubs calculating the amount of union dues for each employee (CP-32). Following the calculations, there was the following statement:

The CWA has announced they are willing to reduce dues from their normal rate of 1.15% to .9% of gross salary for "the first contract" and after that, who knows?

Remember, your vote is vital - VOTE NO! [CP-32]

D'Arcy acknowledged that the calculations were accurate (5T130).

35. At the commencement of the election, the November 17th edition of the Rutgers Focus, a University publication which is distributed to faculty and staff including APS employees, printed an announcement of the election and encouraged eligible voters to vote. D'Arcy described this announcement as neutral (R-27, 4T133-4T134).

Election Results

36. On December 14, 1995, the ballots were received and counted by Commission staff agents. I take administrative notice of the results as reflected by the Commission's tally of ballots.

In the unit defined as all non-faculty, professional, primary level supervisors at or below range 29, there were approximately 274 eligible voters. There were 4 void ballots, 76 ballots were cast for the CWA, 135 ballots were cast against the CWA and there were 2 challenged ballots.

In the unit described as all non-faculty, professional administrative employees at or below range 29, there was a professional option vote among the approximately 146 eligible voters which resulted in a majority of the votes cast against inclusion with non-professional employees. Therefore, a separate tally sheet was prepared for this group on the yes/no question of whether they wish to be represented for purposes of collective negotiations by CWA. The tally sheet recorded of the 146 eligible voters there were 3 void ballots, 43 votes were cast for CWA and 50 ballots were cast against the CWA.

In the unit described as all non-faculty, non-professional administrative employees at or below salary range 29, the tally sheet reflected approximately 1,605 approximate eligible voters with 23 void ballots, 497 votes cast for the CWA and 671 cast against the CWA.

37. Certifications of Results were issued by the Commission on January 4, 1996, confirming that the majority of votes cast by the employees in the described units were not cast for the employee organization. The unionization effort was defeated.

After the Election

38. On December 20, 1995, Norman sent a letter to "Employees who were eligible to participate in the CWA Election" reporting the results of the ballot count and noting that 57 percent of

the ballots cast were "No" votes. He expressed gratitude for the large voter turnout (74 percent of eligible voters returned ballots) and a commitment to improve the dialog between staff members and address concerns which prompted the unionization effort (R-126).

39. Norman felt that the unionization effort was triggered by two or three issues, particularly the concern over health benefits and the failure of the University to communicate important information to the APS staff (19T24). As to Norman's commitment to address concerns of the APS staff, on March 13, 1996, Otzenberger organized a meeting of approximately eight individuals representing a cross-section of the University to review issues raised during the CWA campaign and "... to discuss possible steps to alleviate the underlying causes of these issues/concerns" (CP-45, 6T153-6T155).

At the meeting, there was a discussion that there was a significant "yes" vote in the election which sent a message that something needed to be done to improve relations with the APS staff and a recommendation that a larger group be convened. This larger group, known as the focus group, was developed by Waldman (CP-33, 6T156-6T157, 19T91-19T92, 19T96).

The focus group was established to address the concerns of administrative staff, improve their working conditions and thereby avoid unionization. Although forestalling future efforts to unionize the APS staff was not the primary goal, it was a motivating factor (CP-33, CP-45, CP-46, 6T67-6T68, 6T154, 6T158-6T160, 7T18, 7T31, 8T50, 8T65, 11T23, 11T32, 11T42, 19T24-19T25, 19T92, 19T96-19T98). Meetings took place on the different campuses, one meeting per campus (6T72, 6T163).

Otzenberger's and Waldman's testimony was inconsistent as to the size of the group, but it appears that it consisted of at least seventy individuals including employees eligible to vote in the CWA

election as well as non-eligible employees and management (CP-33, 3T16, 3T50, 3T59, 6T68, 6T98, 6T159, 6T162). This group was different from, and larger than, the group Norman met with prior to the campaign in November 1995. Both groups did, however, include some of the same people (CP-33, CP-42, 6T112).

After the election, in addition to the focus group Norman put together an advisory group. Testimony regarding these two groups was confusing and, at times, inconsistent. Witnesses used the terms "focus group" and "advisory group" interchangeably. Also, a document, CP-33, was referred to at various times as the list of members in the focus group, which was convened in the summer of 1996 to address issues APS staff concerns, and, also, as the membership of the advisory group. The advisory group was separate and distinct from the focus group; it was larger and formed by Norman to follow-up on a recommendation of the focus group that encouraged disseminating information more quickly and efficiently through better technology to the APS staff (19T96-19T98).

In either case it appears that Waldman assisted Norman with organizing the group listed in CP-33 (6T68, 7T27, 11T23). He helped define the participants by getting representatives from all the major units of the University and creating a membership list (CP-33, 11T28-11T29). Waldman looked for individuals who had daily contact with the issues of concern to the administrative as opposed to the academic operations of the University (11T31-11T32). He selected the heads of the various units or individuals who could represent the head of the unit (11T31-11T32). The list he developed consisted mostly of senior management but also of those who were eligible to vote in the CWA election such as Richard Bird (6T71, 7T31).

For purposes of this hearing it is not necessary to resolve the inconsistent testimony regarding

the specific make-up of the groups, e.g., whether CP-33 was the focus group or the advisory group. The focus group and advisory group were separate entities. They both consisted of management personnel and others who could communicate with and to APS staff on issues of concern. Both were formed to improve relations with APS employees in order to avoid triggering another union organization effort.

40. On July 8, 1996, Norman sent a letter to approximately seventy people in the focus group announcing a series of meetings to take place in July and August on the different campuses to discuss various issues which had surfaced during the CWA campaign and to explore ways of improving relations with the APS staff (CP-46, 6T158-6T159). Specifically, Norman explained that the meetings' purpose was "to discuss current CWA activity and to explore actions the administration might take to improve relations with our non-aligned staff" (CP-46).

Norman directed Waldman to attend "... to talk about administrative and operational issues at the University which were viewed as opportunities for improvement" (11T41). Otzenberger also attended all of the meetings (6T72).

At the meetings it was apparent that "... there [were] still employees who were interested in forming a union" (6T72, 6T75). At a meeting that Bird attended, he read a statement of concern about ongoing organizing activity and what he felt should be done to improve relations between the University and its employees (6T169). This was the only meeting where a prepared statement was read.

Meetings were generally discussions among the attendees (6T169).

The entire focus group never met but small regional group meetings took place on the different campuses throughout July and August of 1996 (CP-40, CP-46, 6T72, 8T51, 8T54, 19T25). As a

result of the meetings a report was generated for Norman summarizing the issues and concerns discussed (CP-47, 6T164, 19T25). The report was subsequently distributed to the focus group (CP-47, 6T164). There were also letter and e-mail follow-ups to the report (CP-48, CP-49, 6T164-6T165).

The report listed three areas for improvement; communications, job security and the compensation system (CP-47). The report recommended three actions; broaden communications, expand inclusiveness and develop a sense of community (CP-47). The overall consensus was that "... the most effective step would be to improve two-way communications (including managerial training) to address the expressed need for greater inclusion" (CP-47).

Waldman's hope was that the focus group would continue to address issues of concern on an ongoing basis but after a strong start the effort died-out sometime in 1997 (7T18, 7T36, 11T35).

41. Following the focus group's report, Norman formed the advisory group which consisted of managers from throughout the University. The advisory group was formed to disseminate information to APS staff more quickly and efficiently through the use of better technology such as e-mail (CP-33, 19T24, 19T92). This group never met but was conceived as a way to reach out to staff (19T24, 19T92). This group was different from, and larger than, the focus group (19T92).

According to a January 1997 advisory group list, among the 70 plus members from the various Rutgers campuses was Assembly delegate Bird, Camden Associate Provost Rory Maradonna, Otzenberger, New Brunswick Associate Vice-President for Enrollment Management Corinne Webb,^{10/}

^{10/} Webb had been associate provost on the Camden campus between 1980 and September
(continued...)

New Brunswick Director of Graduate and Professional Admissions Don Taylor, Newark Associate Dean for Administration Gerald Warshaver and Camden Associate Provost for Administration and Finance Mark Rozewski (CP-33). Neither Webb nor Rozewski had any recollection of participating in this group or what its purpose was (2T173, 20T130-20T131). Taylor did not attend any meetings of the advisory group (17T174-17T175). Neither Dean David Hosford, Associate Dean G. Miller Jonakait, nor Associate Dean Gary Roth, Chepitch's supervisors, were on the list of members of the advisory group (CP-33).

D'Arcy "Humble Pie" E-mail

42. On January 23, 1996 within a month of the CWA election, D'Arcy sent Norman an e-mail entitled "Humble Pie". It stated:

Dear Richard, it has been many moons since we spoke last, and perhaps using email is cowardly of me, but I have to start somewhere. May I take you to lunch?

I must give credit where credit is due. You were a worthy opponent, sitting on the other side of the table so to speak, and you were successful in averting a move that you believed would be detrimental to the University in the long run. I did and still do believe that turbulent economic and political times require those with shared interests to form a strong and united front, but perhaps there is another or better way to accomplish the goals of the Assembly, which I do not believe are contrary to the goals of the University.

I hope some good will come of this. Quite frankly, I don't want to go through this again in another year and I would like to start over. Is that possible? Or have I fixed things for good? [R-30, 4T165]

On January 24, 1996, in response to D'Arcy, Norman responded:

Maureen,

Let's get two things cleared up before I respond to your invitation. You have no humble pie to eat! You and your colleagues ran a good hard campaign and have nothing to be ashamed of. Secondly, the unionization effort was a professional exercise with, I hope, mutual respect on both sides.

You are quite right when you say we have a difference of opinion regarding the need for a union but I want to save something to discuss at our lunch. i.e., yes, I would be pleased to have the opportunity to discuss the future of the Assembly and how we can work to make things work. Contact my office and let's meet soon. [R-30, 4T165]

D'Arcy met with Norman and Otzenberger in January 1996, shortly after she was reelected to a second term as president of the Assembly. They generally discussed her plans for the new year (4T125).

The Second CWA Campaign/RAPSS

43. A second organizing campaign supported by the CWA began in March 1996, under the name "Rutgers Administrative Professional and Supervisory Staff Union" (RAPSS) (CP-14, 3T56, 3T66-3T68, 5T28). D'Arcy was involved in the new organizing campaign (CP-14, 3T67-3T68, 6T15). Some of the original organizers from the first campaign participated in RAPSS such as Chepitch, Tarter and Randolph as well as Nabil Kandil, Mike Fantina, Anthony Mickelson, Bernice Lopa, Pat McManus and Edith Frankel. A few meetings were held at CWA headquarters, but not at the University (5T22).

A pamphlet was prepared in January/February 1996 by D'Arcy with the assistance of CWA

representatives and distributed at the March 1996 Assembly meeting and then mass mailed to the APS staff as well as upper level management including President Lawrence (CP-14, 3T68-3T70, 5T22, 5T31, 6T19). D'Arcy personally delivered a copy of the RAPSS document to Norman and Otzenberger (CP-14, 4T45, 6T168, 19T26, 19T98).

D'Arcy and two other employees, Michael Fitzgerald and Janice Morrell, were listed in the RAPSS pamphlet as campus coordinators and contact persons for the organization (CP-14). The pamphlet outlined the purpose of RAPSS/CWA:

RAPSS/CWA works to represent Rutgers Administrative Professional and Supervisory Staff, collectively – inside and outside the University – and to benefit our members by providing access to the complete array of individual benefits available to all full members of CWA. But we cannot achieve our common goals without your support. We believe that by working together and building an organization, we will be able to effectively improve our working conditions and help the University succeed. All in all, we believe our goals and benefits make good reasons to join RAPSS/CWA. [CP-14]

The pamphlet encouraged APS staff to join RAPSS because each new member “brings us a step closer to gaining collective bargaining rights in the future” (CP-14).

44. Those spearheading the RAPSS effort decided to take a slower and different approach to organizing than the 1995 CWA campaign by holding meetings which involved more of its constituent group (CP-15, 3T70-3T71). Flyers announcing three brown bag lunches in March or April 1996, one on each Rutgers campus, were sent to APS staff (5T31). Only three individuals beside D'Arcy attended the Camden brown bag lunch held in March or April 1996 (5T30).

On March 14, 1996, D'Arcy authored a letter distributed to APS staff on the Camden campus acknowledging the loss of the CWA election and inviting those who wished “to lay the ground work for

a successful campaign in the future” to a brown bag lunch meeting with her and a CWA representative “to discuss some ideas about where to go from here” (CP-15, 4T47, 5T31, 6T20).

Other than the RAPSS brochure and the flyers, no other publications were distributed during the second campaign (5T30).

45. D’Arcy’s public support and active involvement in RAPSS stopped in April 1996 (5T31, 5T66). The last meeting she attended was in the CWA offices to discuss strategy, shortly after the RAPSS brochure was distributed in March or April 1996 (5T31, 6T20, 6T44, 6T55). D’Arcy felt that once her participation in the second campaign became known, after the distribution of the RAPSS pamphlet, she was harassed. According to D’Arcy, the harassment caused her to pull out of the second campaign effort because “. . . [her] ability to do RAPSS , and [her] ability to do [her] job and to be a parent did not go very well, did not all come together” (3T72) (CP-14, 3T71-3T72). (See generally discussion under D’Arcy subsection titled “Other D’Arcy Personnel Actions” under findings of fact nos. 86-101). She felt that her participation in RAPSS put herself and her family in jeopardy (5T48).

In the spring of 1996, D’Arcy was experiencing significant family difficulties which caused her stress and impacted all areas of her life. Specifically, D’Arcy was attending family counseling with her two daughters. Her youngest daughter was experiencing problems in school and her oldest daughter was going through “. . . senioritis, and doing everything that she hadn’t done before, saved it all up for the last spring of her senior year” (5T40). D’Arcy’s parents were also very ill during this period (5T40).

D’Arcy initially denied that these family issues impacted her decision to withdraw from RAPSS

(5T38). Her explanation on cross examination that “. . . being a parent affects everything I do,” however, is more plausible (5T39).

Family difficulties, therefore, affected her decision to drop out of active participation in the second CWA organizing campaign. There is no evidence, either direct or circumstantial, that D’Arcy’s family problems were caused by her participation in or support of RAPSS.

46. Other than the brown bag lunches, no formal meetings of RAPSS were ever held (5T29). Additionally, after the distribution of the RAPSS brochure there were only one or two additional meetings of the group before the second campaign disbanded (5T22, 5T28). The RAPSS campaign ended in the summer of 1996 (3T72, 5T66).

Norman and Otzenberger were, however, aware of the second campaign. Otzenberger addressed the issue in the July 8, 1996 letter he sent to the focus group scheduling meetings stating that “. . . we are setting up a series of smaller meetings to discuss current CWA activity and to explore actions the administration might take to improve relations with our non-aligned staff” (CP-46, 6T168).

August 1996 Bird Motion at Administrative Assembly

Throughout the spring and summer of 1996, Bird and D’Arcy exchanged e-mails concerning her leadership role as Assembly president and her participation in the unsuccessful CWA organizing effort. These exchanges culminated in the introduction by Bird of an August motion in the Assembly calling for the resignation of those delegates who continued efforts to organize the APS staff.

The e-mails were introduced as CP-38 and CP-39. Each exhibit contained numerous e-mails with attachments and were confusing because they were not arranged chronologically. I have attempted to organize the facts chronologically, as follows.

47. After the November/December 1995 election, Bird initially was not aware of the second campaign. He never saw the RAPSS pamphlet (CP-14, 8T32).

On April 12, 1996, Bird sent D'Arcy an e-mail on the subject of "new leadership" in the Assembly. He queried D'Arcy as follows:

Do you think m [Richard Norman] is displeased with all the leadership of the aa [Assembly], or is he just leery of seeing cwa [sic] activists in positions of leadership? I believe it is the latter. If he is convinced you have thrown your lot to the aa, I don't think he has a problem with you. I don't think he has a problem with me or norma. Personally, I would like to see those who are actively pushing the cwa [sic] resign the aa [Assembly] rather than use it as a platform for their cynicism. [CP-39]

48. Bird learned that D'Arcy was still involved in organizing efforts when he was invited by Norman to join the focus group in late spring or early summer 1996 (CP-46, 8T52).^{11/} Bird went to only one focus group meeting on the New Brunswick campus in July or August 1996 (CP-46, 8T51, 8T54). According to Bird, upon receiving the invitation to join, he telephoned Norman because he was concerned that the focus group was usurping the functions of the Assembly and wanted to know why Norman was not using the Assembly as a vehicle to identify the most important issues of APS staff (8T51-8T52).

According to Bird, during this telephone conversation, Norman told him he formed the focus group and decided not to utilize the Assembly because he (Norman) did not trust D'Arcy due to her

^{11/} Bird testified that the invitation was in the spring of 1996. However, according to CP-45 and CP-46, a smaller ad hoc group which did not include Bird was convened in the spring. The first invitation for the focus group was sent in early July for meetings scheduled in July and August.

continuing efforts to unionize APS employees (8T52). Norman did not recall the conversation with Bird nor did he recall having a problem dealing with D'Arcy as Assembly president (19T90, 19T119). Based on the foregoing, I credit Bird's testimony about the telephone conversation. It comports with Norman's concerns about D'Arcy's dual role as Assembly president and CWA organizer during the 1995 campaign which led to the development of campaign guidelines. (See generally finding of fact no. 17). In all probability, that concern continued post-election since D'Arcy was Assembly president and still involved union organizing.

49. In the spring of 1996, Bird was disturbed to hear that D'Arcy was still involved in organizing efforts because D'Arcy had told the delegates after the election that she was no longer involved and was going to devote her efforts wholeheartedly to the Assembly (CP-38: July 26, 1996 e-mail, 4T125-4T126, 8T36, 8T52). Relying on D'Arcy's assurances, Bird supported D'Arcy's reelection as Assembly president (CP-38, 8T36).

In a July 1996 e-mail exchange, D'Arcy and Bird discussed his request for guidance from the APS staff on three issues of greatest concern to them. He needed input before attending a focus group meeting. D'Arcy in pertinent part replies to Bird's request:

APS staff need to be treated with courtesy and respect . . . I am not sure what to do for this. Courtesy and respect on the job means demonstrating a level of professionalism that recognized the inherent (sp?) worth and contribution of each employees [sic], the ability to rise above personality to get the job done, and above all for the white males that run this University to accept the fact that they can't and must not do it alone anymore. They are still pulling all the strings, and as long as they can sit around a table and discuss with each other that they really know what is best for the University, that they have a handle on how to move the University forward, a vision, a perception that the rest of us can't grasp, they are guilty of the worse form of bigotry, chauvanism

[sic], prejudice, and racism.

* * *

Thanks for asking my thoughts. However, I do not believe the present administration is sincere or willing to make the necessary changes to improve the quality of life at the workplace. Therefore, as you know, I have launched the second organizing campaign and plan to move full speed ahead. [CP-38]

In a July 25, 1996 e-mail response to D'Arcy, Bird wrote:

When I got the letter from Norman asking me to participate on this focus group, in response to cwa organizing activities, I called him and asked him if he planned to ask the aa [Assembly] for the same advice (how to address the 3 major issues, whatever they are). He said he was hesitant to approach the aa on the issue because the aa is the target of the cwa. I said that didn't matter. That it is the kind of advice we were created to provide. That asking the questions would help the aa resolve its schizophrenia about unionization. He asked how he should approach us. I said through Maureen. He said, but maureen [sic] is actively working for cwa. I said, no, before she ran for president she said she was through with cwa and had cast her lot with the aa for better or worse. (That's why I didn't campaign against you.) He said, her name is on cwa literature. Then he said he would think about it. I then wrote him a letter saying that if he can't approach the aa on this issue, what is its justification for existence.

Maureen, no hard feelings, but I don't think you can ride two horses. I asked you to resign when your loyalty was to cwa. When you ran for pres. you said your loyalty is with aa. You now say you are with cwa again. So I repeat, resign the presidency and let the aa be what it can be without being influenced by your (subconscious, I suggest) hopes that it now fail to the benefit of cwa. Be honest. [CP-38, 8T52, 8T76-8T77].

Bird believed that Norman was leery of seeing CWA activists in positions of leadership in the Assembly because he (Norman) was getting messages from the same small group of Assembly

delegates and those messages were personal, not representative of the Assembly delegates or their constituency (8T59-8T60). Although Norman never used the term "union activists", Bird understood that Norman meant he was getting information from D'Arcy and/or Tarter and, to a lesser degree, Chepitch (8T60-8T61).

50. On August 8, 1996, Bird introduced a motion at an Assembly meeting calling for the resignation of Assembly delegates who wished to continue working on behalf of unionizing the administrative staff (CP-37).^{12/} Bird did not discuss the motion with the Administration (8T35, 8T55, 8T78).

Bird introduced the motion because he believed that continuing efforts by Assembly delegates on behalf of the CWA undermined the trust in the Assembly by the central administration and the APS employees (8T35).

Bird's motion stated:

Whereas, The Administrative Assembly was constituted to provide a forum for the discussion of issues of concern to its constituents and to communicate its advice on these matters to the President; and,

Whereas, in order to fulfill this mission the Administrative Assembly depends on the trust and confidence of the President and of its constituents; and,

Whereas, The recent attempt by the CWA to unionize the constituency of the Administrative Assembly was defeated by a majority of those voting; and,

Whereas, continuing efforts by Administrative Assembly delegates on

^{12/} Motions of the Assembly are introduced one month in advance of formal consideration and vote (5T60).

behalf of the CWA to unionize the Assembly's constituency undermines trust in the Assembly by the President and by the Assembly's constituents; and,

Whereas, it is in the interest of the CWA to have an ineffective Administrative Assembly; therefor,

Be It Resolved that, The Administrative Assembly calls on its delegates who wish to actively seek to unionize A/P/S staff of Rutgers University to resign their seats as delegates to the Administrative Assembly. [CP-51]

The motion caused such an uproar at the meeting that Bird later called the secretary of the Assembly to tell her he was withdrawing it and asked her not to attach it to the minutes of the meeting, but she attached it anyway (CP-51, 8T37, 8T48, 8T66).

On August 9, 1995, Olzewski wrote to Bird and copied D'Arcy :

As you know, I actively and energetically opposed the recent effort of the Communication Workers of America to be certified as the bargaining unit for the Rutgers A-P-S employees. I feel that the attempt to involve the Administrative Assembly in that effort was ill-advised and strongly contrary to the best interests of the Administrative Assembly.

I further feel that the Assembly should protect its integrity by requesting that those who in [sic] future take an active part in an effort to certify a collective bargaining agent for it constituents dissociate themselves from the Assembly. This is necessary to avoid the appearance of a conflict of interest.

I regret to say, however, that I cannot support the motion you produced at the August 8 meeting of the Assembly for consideration at the September meeting. The repetitive reference to the late CWA initiative makes the motion appear to be punitive against those who supported the CWA, rather than prescriptive, to inhibit future difficulties.

I respectfully request that you withdraw the motion as presented, and work with your fellow representatives to draft a less inflammatory motion to accomplish the purpose, viz., to protect the Assembly from future conflicts of interest. I have appended a possible alternate text. [CP-52]

Olzewski's alternate motion stated:

Whereas, The Administrative Assembly was constituted to provide a forum for the discussion of issues of concern to its constituents and to communicate its advice on three matters to the President; and,

Whereas, in order to fulfill this mission the Administrative Assembly depends on the trust and confidence of the President and of its constituents; and,

Whereas, The recent attempt by the CWA to unionize the constituency of the Administrative Assembly was defeated by a majority of those voting; and,

Whereas, continuing efforts by Administrative Assembly delegates on behalf of the CWA to unionize the Assembly's constituency undermines trust in the Assembly by the President and by the Assembly's constituents; Therefore,

Be It Resolved that the Administrative Assembly calls on its delegates who wish to continue to actively seek unionization of the A/P/S staff of Rutgers University to consider whether, in the interests of a more effective and viable Administrative Assembly, they ought to resign their seats as delegates to the Administrative Assembly. [CP-37]

The motion came as a shock to D'Arcy since her active participation in CWA organizing activities ended in April 1996 (3T54, 5T66-5T67). D'Arcy attempted to learn from Bird what prompted the motion (3T54).

On August 11, 1996, she e-mailed Bird:

I have had the opportunity to review your motion as distributed at our meeting on Thursday and the changed language you faxed to Alberta on Friday. I was very surprised and am still surprised three days later.

I do not understand why you believe delegates interested in organizing undermines trust in the Assembly by the President and/or its constituents. Just because you don't agree with all of your colleagues on this issue and many other issues does not speak to a lack of trust, does it?

What prompted this action? I hope it is not because I asked that our e-mail relationship revolve around issues directly related to the [Assembly] and requested that you do not correspond with me otherwise.

Well, you probably have a lot of reasons for taking the action you did. Perhaps you will share them with me some day. [CP-38]

D'Arcy also asked Bird who "rn" was and Bird replied that it was Vice-President Richard Norman. He then explained to her that he had gotten some flak on his motion and no support (CP-38).

51. In response, on August 12, 1996, Bird e-mailed D'Arcy explaining the reason for his motion:

My main concern was that [Richard Norman] would not approach the assembly on the matters discussed by the focus groups, because, I think, he doesn't trust us. My second concern was that you and Bev [Tarter] have a conflict of interest that you may believe you can handle, but I think may subtly [sic] affect your words and actions. It is not a matter of trust. That is why I altered my motion and removed the clause that seemed to suggest trust is an issue. Perhaps it's time the aa adressed [sic] the issue of collective bargaining again. This is an opportunity. [CP-38]

52. After the August Assembly meeting, D'Arcy talked to Otzenberger about the motion. She refused, however, to take a telephone call at home from Norman to discuss it (3T54, 6T125).

Both Bird and D'Arcy had indicated to Otzenberger before the August motion, that there would be a motion calling for D'Arcy's resignation (CP-37, 6T121-6T123). Otzenberger relayed that information to Norman (6T125).

On August 21, 1996, D'Arcy resigned as president of the Assembly rather than allow Norman to assert a lack of trust in working with the Assembly because of her dual role as president and her participation in the second CWA organizing effort (3T54). D'Arcy's conclusion about Norman's lack of trust derived solely from her e-mail communications with Bird, not from any conversation with Norman (CP-38, , 4T123-4T127, 4T166). D'Arcy acknowledged that despite her leadership role during the 1995 CWA campaign and her continued participation in organizing activities after the election, no one in the Administration prevented her from continuing these union activities or required her to resign her Assembly presidency. D'Arcy made the decision to resign as Assembly president for personal and professional reasons having nothing to do with pressure from the Administration (4T120-4T121, 4T123-4T127, 4T166).

53. Neither Bird's motion nor Olzewski's revision was ever considered by the Assembly for vote. Bird withdrew the motion after several days because of a rising chorus of "invective and protest" (8T49, 8T69-8T70). In his opinion it was too disruptive and would destroy the Assembly (6T124, 8T36).

54. On September 13, 1996, President Lawrence sent a letter to the University community regarding his support for the Assembly. He recognized its valuable advice and recommendations, and urged support for the Assembly's various efforts including release time for Assembly delegates to attend Assembly meetings (R-32, 5T9).

55. On September 30, 1996, D'Arcy wrote a letter to Otzenberger about the Lawrence correspondence, stating "[t]he letter from the President is wonderful. Thank you for all of your efforts. I hope it has a lasting and positive impact" (R-31). As a former Assembly president, D'Arcy was glad that President Lawrence was backing the Assembly and that his support was being communicated to the University community (4T167-4T168).

Miscellaneous

56. Otzenberger never spoke to anyone at the University about D'Arcy's employment in conjunction with her union activities (7T51, 7T99).

He also had nothing to do with Randolph's employment at Rutgers nor did he discuss Randolph's union activities with Corinne Webb, Randolph's supervisor in 1997 (7T47-7T48, 7T50). His staff assisted Webb in evaluating jobs for the 1997 reorganization which she initiated and which resulted in Randolph's layoff, but Otzenberger never directed his staff to speak with her about Randolph's union activities.

As to Beverly Tarter's employment, Otzenberger never spoke to Donald Taylor, her supervisor, or his staff about Tarter's union activities (7T50).

Finally, Otzenberger never discussed Jane Chepitch's union activities with her supervisor Dean David Hosford or any other dean at FASN or direct his own staff to do so (7T47-7T50).

MAUREEN D'ARCY

D'Arcy Background

57. In 1990, Maureen D'Arcy became the first director of housing on the University's Camden

campus (2T195-2T196, 4T53).^{13/} She was primarily responsible for the administration of the housing operation, including billing and assignment of duties as well as enforcement of policies and procedures. D'Arcy has never been responsible for the creation or maintenance of academic programs or for the enrollment of students (5T175).

58. In 1992/1993, Camden Provost Walter Gordon together with Dean of Students Rory Maradonna transferred the custodial and maintenance operation to D'Arcy's responsibilities because of concerns about salary, overtime and underutilization of staff (2T197-2T198, 2T200-2T201). Although the custodial/maintenance staff was located within the housing unit prior to the transfer, the employees were supervised by a supervisor assigned to the physical plant unit (2T198). D'Arcy had these responsibilities for four years or until a 1997 reorganization on the Camden campus which resulted in the transfer back of the housing custodial and maintenance operation to physical plant (4T56).

During the years D'Arcy supervised the custodial/maintenance staff, these responsibilities consumed approximately fifty percent of D'Arcy's time because it was a daily service (3T117). While D'Arcy supervised the custodial/maintenance functions, she eliminated one custodial position and an assistant maintenance mechanic position and solved on-the-job injury problems (2T201-2T202). As a result, money was saved, and in 1994 Assistant Manager Anthony Mickelson was hired (2T202-2T204).

During the years D'Arcy managed the custodial/maintenance operation, the delivery of custodial services to the housing unit improved significantly (3T100). In 1993, she received a merit

^{13/} D'Arcy's official title is manager of housing and conference services (R-16, 2T195). However, for purposes of this hearing I will refer to her as director of housing.

award for the 1992/1993 academic year (2T204).

59. Prior to 1995, D'Arcy was never disciplined (2T196-2T197, 2T204). During her career at Rutgers, however, she has had minor run-ins, disagreements, misunderstandings and a variety of conflicts with colleagues which she attributed to the fact that she was a female in a facilities job (5T150-5T151). D'Arcy believed her difficulties at Rutgers began when she took part in the 1992/1993 study of the custodial/maintenance functions in the physical plant and housing units which resulted in the maintenance operation being transferred to her. She had been critical of the job being done by the maintenance and security staffs (6T40-6T41). According to D'Arcy, she "met extraordinary resistance with any suggestion [she] had, any idea, any concern about things that might be changed" (5T151).

In 1992, a colleague, Nabil Kandil, once called her a prima donna in response to an order she placed for six dozen pencils (5T151). D'Arcy wrote an extensive two-page, single-spaced memo to Kandil justifying her pencil order:

I believe I understand now what you want from me, and from this point forward I will send a letter of justification with all of our supply orders...I also want to apologize to you if my comment about who I work for offended you. But I was very taken aback by your line of questioning. [R-40]

To date, D'Arcy is still experiencing these same types of conflicts with colleagues (5T151).

D'Arcy also experienced a conflict with her immediate supervisor, Cynthia Riggs. In February 1995, prior to her active and public involvement with CWA which began in the spring of that year, Riggs took exception to D'Arcy giving her custodial staff time off to attend a speech by President Lawrence (5T156). In response to Riggs' questioning of D'Arcy's decision, D'Arcy wrote:

Now that I have a full understanding of your position on this, in the future, I will not give my staff permission to do anything that is not directly related to their job duties without running it by you first. I truly regret that another one of my managerial decisions has caused such a problem for you. I seem to be guilty of that quite a bit lately. [R-41]

D'Arcy did not feel that Riggs' reaction in this particular instance was motivated by D'Arcy's union activity (5T157-5T158). Indeed, Riggs and D'Arcy spoke frequently about unionization. According to D'Arcy, Riggs seemed excited about the idea that "... somebody was finally going to do something for the administrators of the campus" and "... someone was taking Rutgers on" (5T154). Riggs was excited about D'Arcy's challenging Rutgers (5T155).^{14/} Riggs was initially eligible to vote, but was removed from the unit by consent of the parties (5T155).

Mark Rozewski Background

60. Mark Rozewski has been an administrator at Rutgers since 1979 (2T51, R-1). Prior to his employment at Rutgers and during his college years, Rozewski worked for Herman's Sporting Goods, a private chain of stores. While working at Herman's, he was the shop steward and on the contract negotiations committee for the United Auto Workers Union, District 65 (2T101).

After he completed graduate school, Rozewski held a part-time evening job at Hanes

^{14/} On cross examination after describing Riggs as being excited about the concept of unionization, D'Arcy was asked whether Riggs was supportive of the CWA activity not hostile to it. D'Arcy testified Riggs was supportive of her (D'Arcy's) efforts to organize and hostile at the same time. However, D'Arcy never specifically explained what Riggs was hostile about or on what she (D'Arcy) based this conclusion. D'Arcy's testimony as to Riggs' alleged hostility was self-serving and not credible.

department store in Woodbridge Center. He was the principal in an unsuccessful effort to organize several hundred retail workers. He recruited employees and persuaded them to sign election cards.

Hanes' management hired an anti-labor consulting firm, Modern Management Consultants, and was successful in preventing an election. Rozewski believes that his work at Hanes materially and negatively changed after this period as a result of, and in retaliation for, his participation in the organizing effort. He believes he was generally harassed because of his union activities (2T101-2T103).

61. From approximately 1986 to 1996, Rozewski was director of physical and capital planning with central administration on the Rutgers/New Brunswick campus reporting directly to Richard Norman. While in New Brunswick, Rozewski was responsible for capital budgeting, campus master planning and major capital planning but had no responsibility for labor relations or union management (R-1, R-2, R-3, 2T18-2T19, 2T22, 2T62, 2T82-2T83, 2T104, 2T106-2T107, 2T173-2T174).

Rozewski was generally aware of the 1995 CWA organizing campaign, although he did not recall seeing any literature on it and was not eligible to vote in the election (2T62-2T64, 2T67-2T68). Rozewski only became aware of D'Arcy's involvement in the CWA organizing campaign during his preparations for this hearing (2T67, 2T170). D'Arcy confirmed that she did not know Rozewski either during the time she participated in the 1995 CWA campaign or during her brief participation in the RAPSS second campaign effort. By the time Rozewski was appointed to a position on the Camden campus D'Arcy's active leadership roll in CWA activities had ended (5T172-5T173).

In January 1997, after the CWA election, Rozewski was appointed to the Advisory Group but did not participate in the group or know what the group's responsibilities were (2T173-2T176). He was routinely appointed to groups that he did not subsequently participate in (2T181).

62. In October 1996 Rozewski was promoted to the position of associate provost of administration and finance on the Rutgers Camden campus by Camden Provost Walter Gordon (R-1). Rozewski did not discuss the CWA organizing effort and election or D'Arcy's 1995/1996 union activities with Gordon either before or after he was promoted (2T108-2T109). When Gordon retired in January 1997, Roger Dennis replaced him as Provost (2T109).^{15/}

63. Rozewski's immediate predecessor as associate provost was Corrine Webb. In 1996 she became associate provost for enrollment management in New Brunswick (20T4). Although he never met with her specifically to discuss his new position in Camden, Rozewski did telephone Webb a few times for technical advise regarding pre-existing budget commitments and computer systems. Also, Webb discussed one personnel matter with Rozewski concerning Gary Urban. Both Webb and Rozewski testified that she never discussed any of the other employees with him generally nor did the subject of the 1995 CWA organizing drive, election, or D'Arcy's role in it or her union activities come up in their conversations (2T65-2T66, 2T110-2T111, 20T140).

64. As associate provost in Camden, Rozewski, together with two other associate provosts, reported directly to the provost who was at the top of the administrative hierarchy (2T19-2T20, 2T33). The associate provosts comprised a service unit for the deans (2T73).

The administrative hierarchy is separate and different from the academic hierarchy. The latter consisted of three deans -- the dean of the college of arts and sciences, the dean of the law school and the dean of the business school -- who also reported directly to the provost. Under the deans were

^{15/} Dennis had been the dean of the school of law in Camden (2T109).

assistant deans and then department chairs (2T72).

On the Camden campus, housing fell under the responsibility of Associate Provost Rory Maradonna as a student life function (2T20). D'Arcy, as director of housing, reported to Maradonna. Rozewski was never responsible for campus housing. In 1996, Rozewski's primary duties consisted of being the senior staff person responsible for the campus budget, academic planning and evaluation, physical and capital planning, personnel administration and campus-wide administrative operations. In 1997, after a reorganization, his duties expanded to include facilities which encompassed custodial and maintenance support services for the housing units (2T19, 2T22, 2T73).^{16/}

DeLoitte and Touche Study: Objectives and Methodology

65. In the winter of 1997, Rozewski and Acting Provost Roger Dennis, who replaced Provost Walter Gordon, initiated a management audit study conducted by DeLoitte and Touche of certain staff support functions and business operations (2T24-2T25, 2T32, 2T182, CP-35, R-4, R-5). Rozewski oversaw the project (2T27).

The purpose of the study was to examine certain staff support functions for efficiency and potential savings (2T24, R-4). Specifically, the project objectives were to provide a "review of Camden's business management structure and processes," "identify opportunities for quick improvements" and "provide recommendations for other management improvements that require a longer term implementation" (CP-35).

Additionally, Rozewski and Dennis recognized a need to create new resources to expand

^{16/} Director of Facilities Bernard DelGuidice, who reports to Rozewski, was responsible for the maintenance of these buildings (2T21-2T22).

academic programs in order to facilitate enrollment growth (2T124). Just prior to Rozewski's arrival at Camden in 1997, the campus experienced a severe enrollment decline. Therefore, the priority of the new administrative team (Rozewski and Dennis) was to recover lost enrollment and grow the campus from about 5,000 to 6,000 students. This goal was accomplished two years later (2T124-2T127).

In the winter of 1997, however, because enrollment was down and allocation of additional State budget lines for new faculty positions was not likely, Rozewski and Dennis resorted to internal reallocation of resources to effectuate the primary objective of the study, recovery of salary and line resources (2T191). The savings on the auxiliary/non-State-side of the budget were reallocated to the State-side of the budget to hire faculty in key areas where there was demand in order to facilitate enrollment growth (2T130-2T131, 2T150-2T153). A secondary objective was improvement of services. Even if quality of service delivery had remained the same after changes from the study were implemented, Rozewski was satisfied as long as his primary objective was achieved – enrollment growth (2T189-2T190).

Throughout 1997 and 1998, Rozewski, Dennis, Dean of the College of Arts and Sciences Andrew Lees and Dean of the College of Business Milton Leonitiades discussed and planned how to meet the objectives defined by the audit. Neither the subject of the CWA organizing campaign nor D'Arcy came up during these discussions (2T124-2T126).

66. Central administration's role was limited to funding approval. Provost Dennis requested co-funding of the audit from central administration through Vice-President for University Budgeting Nancy Winterbauer, because the management audit "has the potential to yield line and salary savings that could then be strategically reallocated elsewhere on the campus" (R-5). Funding was approved on

February 27, 1997 (2T87, R-5).

Also, during the course of the study Rozewski discussed with central administration the feasibility of telescoping the custodial services between facilities and housing and how any savings would be apportioned between the Camden campus and central administration (2T89-2T90). Rozewski expressed a willingness to take those services on provided the savings would be split between central administration and Camden (2T89, 2T133-2T134).

67. DeLoitte and Touche was the only vendor contacted to submit a proposal to do the study because it was the University auditor. It was not necessary to go out to bid for professional services (2T184). Also, DeLoitte and Touche was recommended by University Vice-President Joe Whiteside and selected on the basis of its proposal (R-5, 2T26, 2T85- 2T86, 2T183-2T184).

The audit was conducted through the spring and completed in July of 1997 (CP-35). Rozewski's primary contacts at DeLoitte and Touche were an employee named "Ken" and another individual (2T96-2T97).

D'Arcy's role in the CWA organizing effort, her union activities and the general subject of the CWA organizing drive was not part of the study. It was not discussed by Rozewski, Dennis, central administration or the auditors (2T89-2T91, 2T97-2T99).

68. DeLoitte and Touche commenced its audit by examining the office of the provost, the offices of the associate provost for administration and business manager at the schools of law, business and the college of the arts and sciences as well as the offices of fiscal affairs and administration in student life. They also studied the interrelationships between the retail services division with other campus administrative units (CP-35, 2T31).

The study method had two parts: interviews of key employees on the Camden campus and document reviews of budget information and job descriptions (CP-35). Rozewski gave DeLoitte and Touche organizational charts and broad direction as to areas of inquiry including organizational redundancy particularly in the housing custodial area. DeLoitte and Touche chose the key employees to interview (2T28, 2T39-2T40, 2T94-2T95, 2T186). Rozewski understood key employees to be those who actually do the work (2T53).

69. D'Arcy was not initially interviewed by DeLoitte and Touche. When she learned that her Assistant Manager Anthony Mickelson was interviewed, she became concerned because she knew nothing about the study (2T43, 3T89-3T90).

D'Arcy made inquiries. Her own immediate supervisors, Maradonna and Riggs, had no knowledge of the study; they had not been interviewed at this time (3T90, 5T139). She then learned from Rozewski that DeLoitte and Touche was conducting a study and that, as consultants, they had not requested to speak to D'Arcy because they were interested in speaking with individuals possessing "the nuts and bolts" knowledge of the operation (3T90-3T91, 6T33).^{17/}

Subsequently, D'Arcy telephoned the DeLoitte and Touche management audit team to request an interview (2T43, 3T89-3T90). She left a telephone message. When the consultant returned her call, D'Arcy testified on direct that he explained to her that Rozewski had given him a list of people to contact and that he could not speak to her unless it was approved by Rozewski (3T91). On redirect,

^{17/} Maradonna was eventually interviewed by the auditors (CP-35). I infer that at the time D'Arcy contacted him, he had not yet been approached by them. Riggs was not interviewed for the study (CP-35).

she described the discussion as follows:

. . . he returned my phone call. He said that he would have to ask Mark Rozewski first, if I could be interviewed, but he would not return to campus.

He would be willing to call me and ask me a couple of questions on the phone.

And I said to the DeLoitte and Touche consultant wouldn't you like to come and see the building? Wouldn't you like to look at the books? Wouldn't you like to see what we do over here?

And he said I have been given very specific instructions what the objective is and I need to ask Mark if I could talk to you.

He then called me back. I believe it was probably that same day in the afternoon. This is the DeLoitte and Touche consultant...he said to me that he had spoken to Mark Rozewski and that Mark Rozewski did say that he could call me on the phone and ask me some questions.
[6T33-6T34]

DeLoitte and Touche called Rozewski to ascertain if it was acceptable to interview D'Arcy because of the unusual nature of D'Arcy's request -- she was the only one who contacted them to be interviewed (2T41-2T43, 2T100, 3T91). Rozewski was not contacted about interviewing anyone else (2T42). Nevertheless, Rozewski did not object to DeLoitte and Touche interviewing D'Arcy, and she was subsequently interviewed (CP-35, 2T42, 2T44, 2T100).

After being contacted by D'Arcy and given the go-ahead by Rozewski, the DeLoitte and Touche consultants conducted a brief telephone interview with D'Arcy (3T91-3T92).^{18/} She was

^{18/} D'Arcy testified that others were interviewed at length (6T35-6T36). However, since there is no support for her conclusion, I cannot credit this testimony.

asked two questions. The first regarded whether she believed that the students would be concerned if strangers came into their rooms to do repairs as opposed to the same familiar individuals. D'Arcy felt this was a key issue in housing because it is necessary for the students to feel secure in their living arrangements. The second question related to whether the custodians go into the students' rooms once they have moved in. In both instances, D'Arcy responded that she felt it was important that the staff remain the same and be consistent (6T35).

D'Arcy felt that she could have contributed to the DeLoitte and Touche study if she had been interviewed more extensively, because, in her opinion, she was a "key individual" familiar with the data underlying the cost per bed charges. That information was provided to her through central administration in New Brunswick and through Associate Provost Maradonna. According to D'Arcy, Mickelson did not have this information. As far as D'Arcy knew, the consultants never reviewed any housing budget materials, work records, time off reports, expenditures or work orders, because she was never asked to provide this material (3T92-3T93, 3T101-3T103). This data can be accessed only partially through a central administration computer data base but most of it was maintained locally in housing as part of their records which at the time of the study was not accessible through the central administration data base (3T104-3T105).

Based on the foregoing, I cannot find that the consultants did or did not review budget data. They were not called to testify. D'Arcy's conclusions are uncorroborated.

Charging Party suggests D'Arcy's conversation with the consultant confirms that Rozewski, not the consultants, determined who to interview, but D'Arcy's description of her phone conversation with the consultant was inconsistent. Being given very specific instructions of what a study's objectives are

and being given a list of individuals to interview for that study are not the same thing. Her testimony on redirect comports with Rozewski's testimony that the consultants were given broad discretion and instructed to interview key employees who Rozewski understood to mean individuals with the nuts and bolts knowledge of the operations.

I credit Rozewski's testimony that although he was generally aware through progress reports of certain individuals interviewed by the consultants, he did not instruct the consultants to interview specific individuals nor did he instruct them to interview or not to interview Maureen D'Arcy (2T40-2T41, 2T49-2T50, 2T99). Other than D'Arcy's own general description of her telephone conversation with the consultant, there is no independent corroboration that Rozewski, not the consultants themselves, determined who to interview. The consultants were not called to testify, whereas Rozewski testified at length and consistently concerning the study's objectives and the methodology employed by the consultants.

Rozewski did not consider the initial decision by DeLoitte and Touche not to interview D'Arcy unwarranted because DeLoitte and Touche was studying the facilities maintenance function in housing not what the director of housing did. He concluded that since D'Arcy did not actually do the maintenance work, she was not a "key individual" and that DeLoitte and Touche could do an effective audit and make recommendations regarding the feasibility of merging Campus and Housing maintenance operations without interviewing her (CP-35, 2T48-2T50, 3T91).

For instance, DeLoitte and Touche interviewed Anthony Mickelson who supervised the facilities maintenance function directly and was a key individual responsible for the day-to-day operations (2T49). Mickelson's interview questions focused on "his role in the housing operations,

how the maintenance and custodial operation worked” (3T89).

Charging Party also suggests an adverse inference should be drawn from DeLoitte and Touche’s decision not to interview D’Arcy initially. D’Arcy believes that her union activity in 1995 and 1996 motivated the University to exclude her from the interview process and then take the later action which resulted in the custodial/maintenance functions being removed from her control and transferred back to physical plant (5T143-5T144). After the 1997 reorganization, D’Arcy, however, contacted the CWA and an attorney to discuss whether the University’s actions in the reorganization constituted sexual discrimination, anti-union animus, politics or were related to her personality, namely, “. . . the fact that I don’t always jump when someone snaps their finger” (5T147-5T148). D’Arcy attributes the University’s actions to all of these possible motives not solely to her 1995/1996 CWA activities.

For several reasons, however, I do not draw any adverse inference from the initial decision not to interview D’Arcy. No direct or circumstantial evidence establishes that the selection of DeLoitte and Touche as management auditors for the study was irregular, that their conduct of the study was other than standard procedure, or that DeLoitte and Touche were given specific instructions to exclude D’Arcy from the process,

Additionally, I credit Rozewski’s testimony that the selection of DeLoitte and Touche auditors to conduct this study was customary because it was usual to use the University’s own auditors. He did not instruct DeLoitte and Touche to specifically interview or not interview D’Arcy or any other particular individual. He was not aware at the time of the study that D’Arcy was a union activist.

When the consultants contacted Rozewski about D’Arcy’s request for an interview, Rozewski told them to go ahead and interview her (2T42). If DeLoitte and Touche had been given prior

instructions by Rozewski not to interview D'Arcy, it would have been unnecessary for them to reach out to Rozewski again to ask permission. They would have known that Rozewski did not want her interviewed.

As to the conduct of the study, D'Arcy had taken part in a 1994/1995 efficiency review of the custodial/maintenance function in housing and physical plant for the New Brunswick campus (3T93). That study also involved outside consultants. D'Arcy was not interviewed by them. She was only interviewed by University Director of Housing Michael Imperiale (3T93). Therefore, DeLoitte and Touche's decision not to include D'Arcy in their initial interviews does not, therefore, appear to be irregular; it comports with the standard methodology for such a study. Also, DeLoitte and Touche did not avoid interviewing CWA activists generally. For instance, Loretta Uhl, Joyce Seganic, Anthony Mickelson and Nabil Kandil, all active CWA supporters and organizers, were interviewed by the consultants (CP-6, CP-6a, CP-7, CP-8, CP-9, CP-10, CP-35, 5T136).

Finally, to draw the inference suggested by the Charging Party, I would have to conclude that the study was initiated and designed to remove the custodial maintenance function from housing and that Rozewski believed that D'Arcy's information was so important that if the consultants were to interview her, it would have changed the study's outcome. This conclusion is too speculative, illogical and unsupported by the evidence. Rozewski's objective in initiating the study, a need to reallocate current resources to recapture salary lines to enhance the academic program and increase enrollment, was accomplished by the implementation of DeLoitte's and Touche's recommendations, e.g., actual dollar savings and reallocation of those savings to academic programs. (See generally discussion below on Recommendations and Impact of the Study, findings of fact nos. 71-74). Additionally, the

reorganization impacted not only D'Arcy's housing unit but had a greater impact on the campus business operations.

70. At the time that the DeLoitte and Touche study was undertaken in the winter/spring of 1997, the student life organizational structure was headed by Director of Administrative Services Gary Urban with Director of Physical Plant Martin Ryan reporting to him (CP-35, 2T34-2T35, 2T38).^{19/} Reporting to Ryan were the assistant director of maintenance, planning and renovation (Bonnie Nikituk), the assistant director of utilities and maintenance, and the assistant director of boiler operations (CP-35, 2T35, 2T43).

Urban, Ryan and Nikituk were all interviewed by DeLoitte and Touche for the study as was Gary Urban and Martin Ryan (CP-35, 2T40-2T41, 2T43, 2T50).

The physical plant maintenance and custodial operations on the Camden campus employed approximately 70 employees (2T137). It had responsibility for major equipment and structural maintenance items (R-6, 4T71). Assistant Manager Anthony Mickelson was responsible for day-to-day maintenance as supervisor of housing custodial/maintenance staff and reported to D'Arcy.^{20/} He supervised one maintenance worker and three custodians (CP-35, 2T38, 2T116-2T117).

The Camden housing unit consisted of approximately 350 beds in two dormitory buildings (2T21). At the time the 1997 study was under taken, the vacancy rate in the Camden housing units

^{19/} Also reporting to the Urban at this time was the police department and the business office (2T36).

^{20/} Mickelson's title was referred to differently by several witnesses and exhibits. I do not need to resolve this inconsistency. His position was supervisory. He was responsible for the day-to-day supervision of the maintenance and custodial staff in the housing unit.

was the highest in the Rutgers system (2T73-2T74). The vacancy rate was over 20 percent. Recently, it has dropped to less than ten percent (2T74, 4T70). When the vacancy rate was high, there was a need to cut operational costs because Rutgers had to some extent subsidize the housing operation (2T74-2T75, 2T133, 2T191, 4T70).

The DeLoitte and Touche Recommendations

71. The DeLoitte and Touche study was released on July 2, 1997. Several individuals, including D'Arcy, Maradonna, Mickelson and Michael Imperiale, requested copies of the study, but their requests were denied. D'Arcy was not singled out in the denial of her request. Specifically, Maradonna requested a copy from Rozewski who informed him that he was not entitled to it (CP-35, 3T102, 5T136-5T138).

72. DeLoitte and Touche made the following observations of the facilities maintenance unit:

- a. According to the Director of Administrative Services, the custodial function is at minimum staffing. If a custodian is on an extended leave, there are not enough custodians to cover the campus.
- b. Many departments complained about inadequate custodial services. Several people noted that custodians emptied trash only every 2-3 days and that they cleaned offices infrequently.
- c. To manage the department, the Director developed a plan to insure that maintenance staff followed a routine schedule.
- d. The department instituted a "TQM program" to gather service information from departments that requested maintenance services.
- e. The Housing office maintains a separate maintenance staff. According to the administrative department, maintenance supervisors in the Housing Office are not technically proficient.
- f. The department developed an RFP to solicit bids for privatizing

facilities maintenance. [CP-35]

The study recommended that Rutgers explore the feasibility of merging campus and housing maintenance operations. Regarding the physical plant staff, it recommended that Rutgers merge the housing maintenance function into the physical plant facilities maintenance function and increase the staff by one (CP-35).^{21/}

The study also suggested Rutgers redefine the associate director of maintenance position to focus exclusively on maintenance related issues, e.g., no large projects. Finally, it recommended that all maintenance calls, including housing calls, should be received by the work control desk at physical plant (CP-35).

Impact of the DeLoitte and Touche Study: Business Office and Housing Unit

The study had varying and specific impacts on both of the Camden business offices and the custodial/maintenance operations in the housing unit.

73. As a result of the DeLoitte and Touche study, the campus services office which supported most auxiliary financial operations in the non-State budget was eliminated and its functions and most of its staff incorporated into the campus business office which oversaw all State-funded as well as selected auxiliary financial operations (R-9, 2T111).

The director of campus services position was eliminated and Director of Campus Services

^{21/} In a July 25, 1997 memorandum to Rozewski after the release of the report, Director of Administrative Services Gary Urban also recommended that physical plant take back the responsibilities for housing maintenance. Moreover, Urban recommended as a necessary condition to this transfer that a communication mechanism be instituted between the students and physical plant to assure that their needs are being met (R-6).

Nabil Kandil, a 62-year-old white male, was laid off (R-9, 2T68, 2T111). He had responsibility for five employees and an auxiliary budget of approximately five million dollars in non-State funds such as student fees (R-9, 2T113-2T115, 2T150). Robert Neese, who headed the campus business office overseeing a 30 million dollar State budget and supervising eight employees, replaced Kandil and became head of the newly organized combined business offices (2T68, 2T111-2T113).

Tara Patterson, a 20-year-old female clerk in the campus services office, was also effected by the combining of the business operations. She was laid off (R-9, 2T68, 2T118-2T119, 2T150).^{22/}

74. The housing custodial/maintenance functions were removed from the housing operation and returned to physical plant. D'Arcy no longer supervised the staff of four custodial/maintenance workers. D'Arcy's salary, compensation package and other benefits remained the same (R-6, 2T68-2T69, 2T121, 2T188, 4T56-4T60).

Assistant Manager Mickelson, a 50-year-old white male, was laid off; his position was eliminated (R-9, R-10, 2T68, 2T115-2T116).^{23/} Mickelson's functions were absorbed by existing personnel in the physical plant facilities maintenance unit (2T116-2T117, 2T135).

Savings from the Reorganization

75. The changes effectuated by the audit resulted in approximately \$200,000 in savings. Specifically, \$127,000 in savings resulted from the elimination of the three positions in the business offices and housing (R-9, R-10, 2T122- 2T123). The laid off employees (Kandil, Patterson and

^{22/} Patterson was a member of the AFSCME bargaining unit at the time. Subsequently, she exercised her seniority rights and bumped another employee on the Camden campus. She has recently applied for and been promoted to a position in the business office (2T119).

^{23/} Subsequently, Mickelson was employed by Rutgers at the New Brunswick campus (2T118).

Mickelson) represented a direct savings to Rutgers in salary and the cost of their benefits because they were all employed in auxiliary line positions (R-9, R-10, 2T122-2T123, 2T132, 2T150-2T153).

Employees on the State budget, unlike those in auxiliary line positions, have their benefits packages paid by the State and, therefore, any savings achieved by their layoffs accrue to the State not Rutgers (2T122).

76. Following the business office lay offs, Rozewski was able to move employees from the State budget to the non-State budget line thus freeing up funds in the State budget line to hire faculty (2T130-2T131, 2T150-2T153). For example, faculty members were hired in the computer sciences, psychology and sociology departments. Also, a program in criminal justice was created (R-9, 2T123-2T124, 2T127). In other words, the reorganization permitted the conversion of general administrative lines to Instructional and Departmental Research (IDR) lines for the purpose of hiring faculty (2T152).

24/

Savings were also allocated to purchase additional newspaper, radio and television advertising highlighting the Camden campus offerings. Savings were also spent to improve public spaces on the campus, particularly the areas prospective students and their parents see first when visiting (2T128).

77. The reorganization of the custodial/maintenance functions resulted in actual cost savings as well as a major service benefit (2T138-2T139).

As to the cost savings, before the reorganization, the housing custodial/maintenance operation was a self-contained unit under the director of housing and operated one shift a day. When an emergency occurred on the second shift, the custodial employee called-in was guaranteed a minimum of

24/ Lines are positions with benefits packages (2T122, 2T130-2T131, 2T153).

four hours time under their contract. By comparison, because the employees in physical plant facilities unit work two shifts, these employees are entitled to only compensation for actual time worked when called-in for emergency situations and under contract are entitled to straight overtime in off-hours. This cost savings was a benefit to the students as well as the University since rent increases were limited because operational costs were stabilized (2T141-2T142, 2T193-2T194).

As to service benefits, the custodial/maintenance employees in physical plant working two shifts were more readily available to respond instantaneously to emergencies. For example, prior to the reorganization, custodial/maintenance personnel would be recalled from their homes in off-hour situations (R-11, 2T143, 2T156-2T157).

Implementation of the Reorganization

78. Rozewski oversaw the implementation of the reorganization resulting from the study (2T145). The effective date of the reorganization plan was August 1, 1997 (4T56). There had been no meaningful organizational changes for 20 years on the Camden campus, therefore, this was considered a major event. It required a rigorous communication strategy for the affected employees and for the rest of the campus to explain the reasons for the changes (2T145).

79. A communication plan was developed for the business offices (R-8, 2T147-2T148). On August 1, 1997, Maradonna spoke to the affected employees concerning the reasons for the reorganization. Jim Venner from the central administration human resources staff assisted in advising employees who were being displaced about their benefits and rights. Venner, however, had no decisional role in the organizational changes (2T148-2T149).

80. A separate communication plan was developed for the housing unit (R-7, 2T146, 4T56-

4T60). On July 31, 1997 at 3 p.m., Maradonna, Cynthia Riggs (D'Arcy's immediate supervisor who worked for Maradonna) and physical plant supervisor Diane Belfus, who was authorized to integrate the custodial functions from housing into the physical plant operation, met with D'Arcy and the housing custodial/maintenance staff to explain the reasons for the reorganization (2T146-2T147, 3T106).

81. The day before Riggs and Maradonna informed D'Arcy of the reorganization and the effects for the housing unit -- the layoff of Mickelson and the move of the custodial/maintenance staff to physical plant. She was told not to divulge the information until 3 p.m. the following afternoon (3T106, 6T37).

D'Arcy thought she would have the opportunity to meet personally with her staff to discuss the changes prior to their implementation but early the next morning the police and a locksmith arrived in the housing unit and changed the locks on the building's outside doors. These doors were kept unlocked during the day but locked at night by the guards. The dormitory has a 24-hour guard who is available to open the door for authorized personnel (5T175-5T176). D'Arcy was usually the only one authorized to order a lock change and was not told that the locks were ordered changed (6T37). The locks to D'Arcy's personal office were not changed (3T115). Although never denied access to the building, D'Arcy was not given a key to the new locks until she asked the University several weeks later (5T175-5T176, 6T37, 6T51).

When Mickelson and the other custodians asked D'Arcy about the locks, she informed them that she could not discuss the situation, it would be explained at 3 p.m when she would meet with them (3T107-3T108, 3T115-3T116).

At 11 a.m., D'Arcy learned from the custodians that they were asked to attend a meeting with

Gary Urban at physical plant and that they were all going to be working there in the future. D'Arcy then called Maradonna to inquire about the early morning visit by the police and locksmith as well as the Urban meeting. It was her understanding that everyone was to be informed of the changes after 3 p.m.. Maradonna responded that he did not think that "it was supposed to happen this way" and then informed her that Rozewski was requiring her attendance at the Urban meeting at 3:15 p.m. (3T108-3T110).

Prior to the Urban meeting, D'Arcy met with Mickelson briefly at 3 p.m. telling him of his layoff and that he had to leave the building immediately and not return. She was not able to explain in more detail because she had to attend the Urban meeting. Later she learned that a guard denied Mickelson access to the building when he tried to reenter after leaving (3T110). D'Arcy did not understand why Mickelson's layoff was so different from the other layoffs occurring that day, specifically why it appeared to her to be "hostile" (6T50).

82. During the 3 p.m. meeting, Urban informed the custodial/maintenance staff of the changes going into effect immediately. D'Arcy was upset but did not have much to say (3T111). After the meeting she telephoned her supervisor and asked her to let Rozewski know that she was not feeling well (3T112).

The next day, August 1, 1997, she was not able to work the full day. She contacted a counselor to discuss her concerns about the reorganization, particularly the layoffs of Kandil and Mickelson. They were her friends and active CWA organizers. She was also concerned about the changing of the locks which she felt was unusual and caused trauma among the housing staff. She later learned from Maradonna that the University had counselors available to its employees to assist in

dealing with transitions of this kind, but no one had informed her or her staff of the service (3T111-3T113).

83. Since the 1997 reorganization, D'Arcy has spoken to students and University Director of Housing Michael Imperiale. According to D'Arcy, she has been told that the buildings are not as clean and housing is paying for many services which were done previously by the in-house custodial/maintenance staff (3T119-3T120). There is no corroboration for this testimony and I do not make any findings therefrom. In an August 25, 1997 memorandum, D'Arcy, however, commented that the level of custodial support is sufficient (R-39, 5T140).^{25/}

Because of the removal of the custodial/maintenance responsibilities which had consumed approximately 50 percent of her time, D'Arcy had more time to spend with students addressing issues of room assignments and to work on improving the facilities in order to persuade students to live on campus as opposed to commuting (3T117, 3T320).

Other Post-1997 Camden Reorganizations and Personnel Actions

84. Reorganizations continued to be implemented on the Camden campus after the DeLoitte and Touche study. Rozewski had a role in these other reorganizations. Reorganizations of the administrative services and the facilities unit saved the Camden campus almost a quarter of a million dollars in salary and non-salary expenses which were subsequently put into the academic side of the

^{25/} In the August 25 memorandum, D'Arcy also wrote to Gary Urban expressing concern about the assignment of only one maintenance mechanic to complete all of the necessary mechanical work during the summer months. The assignment of only one mechanic was not a problem caused by the reorganization but happened during the summer months when too few maintenance staff are hired (5T141).

campus (2T76).

Specifically, in December 1997, Gary Urban resigned as director of administrative services. His position and the office of administrative services were eliminated. The savings realized were put into the academic budget to create a new faculty position. Urban was not have been eligible to vote in the CWA election (R-11, 2T75-2T76, 2T157-2T159).

Also, in the winter of 1998, the physical plant facilities unit was reorganized resulting in the elimination of three associate director/assistant director positions. These duties were assigned to line supervisors. One was eliminated as a result of a voluntary departure, one was left vacant as the result of a promotion and one was eliminated through a demotion. The dollar savings were converted into among other things the hiring of part-time lecturers and special research faculty as well as research assistants and postdoctoral fellows (R-13, 2T76-2T79, 2T160-2T161-2T164). None of the individuals holding these titles was eligible to vote in the CWA election.

85. Additionally, there was also a reorganization on the academic side in order to promote administrative efficiency and provide budgetary savings. The art, music and performing art departments were consolidated into a department of visual and performing arts which eliminated two department chair positions together with their stipends (2T79-2T80).

Other D'Arcy Personnel Actions

D'Arcy believes that her participation in both the 1995 CWA organizational campaign and RAPSS made her a target because of her role as a union leader (5T47, 5T147-5T149). She felt that in addition to having the responsibilities for the custodial/maintenance staff removed from her director of housing function, she began getting negative feedback and exaggerated responses to her job

performance as well as overnight changes in written policies and procedures designed to reflect badly on her performance (6T20). D'Arcy relies on the following five incidents taking place between May and August 1996 to support her belief she was being targeted.

a. The 1996 Merit Award

86. The Merit System Award program is available only to APS employees (R-14, R-15, 2T61, 2T166-2T170, 3T82). The program is based on performance reviews and involves an award of money to staff who perform above-and-beyond the call of duty (2T166-2T167).

On the Camden campus Rozewski was responsible for making sure that the process was completed in a timely fashion and that the individual dollar awards added up to the total monies allocated to the program. He also maintained the records. He did not select the winners; he was only responsible for evaluating the performance of those employees who reported directly to him (2T61, 2T165).

D'Arcy received two merit awards during her employment at Rutgers. She received her first merit award in 1993 for the 1992/1993 academic year. This award coincided with the transfer of custodial/maintenance responsibilities to the housing unit. D'Arcy was recommended for the award by her immediate supervisor at that time, Dean of Students Rory Maradonna.^{26/} Provost Walter Gordon gave final approval of the 1993 award (4T62).

In 1998, D'Arcy was nominated by Maradonna and received her second merit award for the 1997/1998 academic year (4T61, 5T173-5T174).

^{26/} In 1994, Maradonna was replaced by Cynthia Riggs as dean of students when Maradonna was promoted to associate provost (4T62)

87. When D'Arcy was nominated for a merit award in June of 1996, 98 APS employees on the Camden campus were eligible for 1995/1996 awards. Twenty-two employees received it and shared a \$25,000 fund, most receiving \$1,000, some slightly more (R-14, 2T167-2T168). At least four awardees that year were on the CWA organizing committee and took leadership roles in the 1995 CWA organizing campaign (Leland Butler, Alfred Gamble, Nabil Kandil and Loretta Uhl). D'Arcy was nominated for the 1996 award by Maradonna but did not receive one (R-14, 4T65).

When D'Arcy learned that she was not going to receive the award, she was concerned that it was because of her activities in the second CWA organizing effort.^{27/} She discussed her concern with Maradonna. He explained his decision had been overturned by Provost Walter Gordon (2T204, 3T83-3T84).

D'Arcy met with Gordon to discuss his overriding Maradonna's recommendation. Gordon explained that the recommendation had been poorly written and that, in any event, D'Arcy was not a good "executress" (3T84-3T86, 6T21).^{28/} He also explained that although this was the first time he overturned Maradonna's recommendation, he denied any connection between his decision and D'Arcy's activities on behalf of CWA (3T85, 6T21-6T22). D'Arcy went back to Maradonna and

^{27/} D'Arcy testified that someone shared with her that she had been ranked number one in the area of student affairs by Maradonna and she received copies of that paperwork. It is unclear what the significance of D'Arcy's testimony was on this point and neither party clarified her testimony through subsequent examination or other witnesses. For instance, I do not know how many nomination categories there were or how many nominations were successful or unsuccessful in any particular year. The testimony did establish that an individual could self nominate or be nominated by their immediate supervisors (2T61, 2T165, 3T12).

^{28/} D'Arcy took notes of the meeting and wrote down that Maradonna referenced her performance as an executress, but she does not know what that word means. She assumes that Gordon was referring to her performance as an "executive" (3T85-3T86, 6T21).

reported her conversation with Gordon. Maradonna explained to her that it was “out of his hands” (3T86).

D’Arcy could have appealed Gordon’s decision to Vice-President Norman as other employees had done but she never got around to it (3T86).

88. In June 1997 when Roger Dennis was Provost in Camden, three of the APS employees (Leland Butler, Joyce Sepanic and Nabil Kandil) who allowed their names to be used publicly in support of the CWA campaign received merit awards (R-15, 2T168-2T169, 4T66-4T68). Thirty-three APS employees in Camden received the merit award that year (R-15).

b. The Jane Doe Theft Incident and June 1996 Riggs Reprimand

89. Sometime prior to June 1995, D’Arcy reported to her supervisor, Associate Dean of Students Cynthia Riggs, that she suspected a colleague, Jane Doe,^{29/} of stealing money and materials from the University. Riggs determined there was insufficient proof and chose not to pursue D’Arcy’s complaint (3T72-3T73).

In the winter of 1996, still concerned about the thefts, D’Arcy wrote a letter and met with Riggs’ supervisor, Associate Provost Maradonna, to report the suspected theft (3T72-3T73, 5T52). D’Arcy described her decision to go to Maradonna as follows:

I finally became so concerned about [the thefts], it was so blatant and so much, that I went to her boss and – ashamed to say that I went there to tell him that I just wanted him to know it was happening and to wash my hands of it, because I didn’t know what else to do. [3T73]

It is unclear from the record whether Maradonna pursued D’Arcy’s concerns. D’Arcy was

^{29/} I have used a fictitious name to protect the privacy of this individual.

later contacted in May 1996 by Nabil Kandil. He was responsible for accounts in the division of student life. He inquired about a possible theft situation. Kandil had no knowledge of D'Arcy's prior communications with Riggs and Maradonna when he contacted her in May 1996 (3T73-3T74).

In May, after being contacted by Kandil, D'Arcy showed him examples of what was going on and the letter she had written to Maradonna in the winter (3T73). Kandil then contacted Riggs who met with D'Arcy. Riggs told her she should have informed her of what was going on (3T73-3T74). Riggs followed up the conversation with a June 3, 1996 letter to D'Arcy's personnel file. It advised her that in the future she was to address her concerns about the residence life staff to Riggs in writing before telephoning or writing anyone else so that Riggs can correct any situations before they impede the smooth operations of both housing and residence life. Riggs further warned D'Arcy that exposing students to "the discord that occurs between regularly appointed staff members" is unprofessional (CP-16). Riggs told her the letter was a written warning when she handed it to her (CP-16, 5T32-5T37).

Jane Doe resigned in the summer of 1996 because she had been informed by Riggs that she could not keep her two cats in the residence dormitory and chose to resign rather than get rid of her cats (5T52-5T53). It is unclear whether there was any further investigation about the thefts.

c. The May 1996 Fire Incident

90. On the evening of May 2, 1996, a fire broke out in a second floor apartment in the residence halls where D'Arcy has her office. When the fire alarm sounded, D'Arcy, who was working at the time, responded by going to the emergency room. There she could determine where the fire was located. Once the location was identified, it was her responsibility to evacuate the building (3T74-3T75, 6T30).

The fire alarm was triggered initially in response to the fire condition on the second floor. There are both heat sensors and smoke detectors throughout the building. However, when D'Arcy subsequently checked the fire panel, the reading indicated that a smoke detector had triggered the alarm. It was possible that a heat sensor was also triggered, but in either case the sprinkler system was activated (5T80-5T81).

Simultaneous with the alarm, a signal was received by the campus police, and the fire department was notified (3T75). The alarm system was wired so that the campus police were automatically notified when the fire alarm was triggered. The campus police also received a telephone call from the guard's desk in the residence building (5T81). At least three campus police officers arrived within five minutes of the alarm sounding: Detective Pete Berrios, Sergeant Michael Amorim and Officer Terry McGriff (5T83).

As was standard procedure, one officer reported to the fire location while the other officer(s) attended to the first floor control panel. The officers then communicated by radio providing verification and status reports. On this particular evening, Detective Berrios responded to the fire location while Sergeant Amorim and Officer McGriff went to the first floor control panel (R-37, 5T94). The fire department had not yet responded to the scene when the officers arrived (5T86).

91. After her initial check of the first floor control panel but before the officers arrived, D'Arcy proceeded to the second floor, observed smoke and began knocking on doors instructing students that the fire was "real" and to leave the building. At this time, D'Arcy wondered where the campus police were. Eventually, she encountered Detective Berrios in the third floor stairwell coming down to the second floor. She informed him that according to the read-out panel the alarm outside apartment 203

had activated. Berrios walked to the location to check it out (5T95-5T96, 6T30).

Berrios was joined by the campus guard on duty, Zambrana, and the two began knocking on doors. When they arrived at apartment 203 they were informed by the occupant, Bradford Towson, that he had set the alarm off when he accidentally left his stove on and an empty pot caught fire. Towson informed Zambrana and Berrios that the fire had been put out and there was no damage to the kitchen.

After D'Arcy met Berrios on the third floor stairwell and directed him to apartment 203, the alarms ceased, but D'Arcy still observed smoke and students starting to return to their rooms. D'Arcy hit the emergency alarms at a pull-station located in the first floor stairwell (CP-21, R-36, 3T76-3T77, 5T95, 5T99, 6T32-6T33). Although D'Arcy encountered both Berrios and Zambrana on the second floor prior to her decision to pull the second alarm, she did not discuss her decision to do so with either man (5T102, 5T122). Since the fire department had not yet arrived, she understood or thought that the appropriate procedure dictated that the alarms never go off (get shut down) until the fire department arrives on the scene (5T99, 5T103).

After she pulled the alarm, Officer McGriff arrived on the second floor and D'Arcy stated to him:

Look at the God damn smoke, who the hell turned off the alarms? [R-37, 5T100]

D'Arcy was quite agitated and, by her own admission, was "freaking out." She subsequently apologized to Officer McGriff (R-37, 5T101).

92. Due to the audible alarm set off by D'Arcy, Berrios was unable to relay status information

about the origin of the fire to Sergeant Amorim who was manning the first floor control panel (R-36, R-37). Radio communication was only possible when the alarm was silenced due to feedback as well as poor transmitting abilities of the radio units (R-37).

Sergeant Amorim became concerned because he was unable to silence the alarm even momentarily which meant he had no communication, status report or verification from the other officers on the scene (R-37). Amorim was not aware that the reason he was not able to silence the alarm was because D'Arcy manually set off the alarm which had the effect of locking the audible alarm system and preventing shut down (R-37).

While Berrios proceeded to the lobby to inform Sergeant Amorim of the situation, the fire department arrived, searched apartment 203, determined that conditions were safe and the alarm could be reset. However, because the fire chief and Sergeant Amorim were not aware that D'Arcy had activated the first floor alarm pull-station, they were not able to reset the alarm panel. They instituted a search of the floors for another fire (R-36). When the firemen were not able to locate another fire, they concluded the reason for the continuing alarm was smoke and called for a fan to be set up at the scene (R-36).

Detective Berrios located the activated pull-station on the first floor while coming down to meet Sergeant Amorim and Chief Maycott. The pull-station was reset, permitting the alarm panel to be reset and the fan removed (R-36).

93. Immediately after the incident, Amorim prepared an incident report (R-37). In the report he indicated that he spoke to D'Arcy and discussed silencing the alarm, but she found it inconceivable that the police would silence the alarm even momentarily. Amorim explained the necessity for

communication and that her fear of the silenced alarm was unsubstantiated since the system was designed to continue sounding if there was an actual fire. According to Amorim, D'Arcy understood the problems caused by her pulling the manual alarm but stated that she would do it again to ensure evacuation (R-37). Amorim also cautioned D'Arcy about reprimanding an officer (McGriff) and D'Arcy apologized (R-37).

Amorim concluded his report as follows:

After a lengthy meeting with Ms. D'Arcy most of the problem areas were successfully addressed. I explained to her that the proper action for her would have been to let the police do their job. We respond to fire alarms regularly and have an excellent track record. My officers are well trained, responsible and are not to be second guessed and certainly not reprimanded for carrying out their duties. Our operating procedures are all designed with a specific intent. Ms. D'Arcy's actions today were a serious impediment which may have produced more serious implications. The one point on which we were in total agreement was that of the manual alarm. There is no way to by-pass this thru [sic] the arm [sic] panel, which means that if anyone pulls on the manual alarm a repetition of tonight's difficulty is possible. Better radio communication is an absolute must. [R-37]

94. According to D'Arcy, the written procedures on which she relied in deciding to pull the second alarm were issued by Joseph Zuccarello, chief of fire and emergency services, in June of 1994 and distributed by Gary Urban as an update to staff in response to a May 1994 fire emergency in housing (R-35, 5T93). The June 1994 procedures required summoning the fire department in all cases where there was evidence of actual fire. Where there was no evidence of actual fire, the incident was investigated by campus police before notification to the fire department. The procedures emphasized the following:

The campus policy regarding reports of fire fall into two categories.

The fire department is always summoned when there is evidence of a fire. This evidence can take the form of a sprinkler flow alarm, smoke, heat, visible flames or suspicious odors in addition to the fire alarm. Requesting city fire department response may occur before an officer arrives at the scene, depending on the source and amount of information available before this arrival.

A fire alarm without other evidence of fire is investigated by University Police. If this investigation reveals fire or symptoms of fire, the fire department is then notified for their response. Sometimes, however, these alarms are false due to equipment problems or tampering.

It is important to emphasize the authority of the fire department Chief. This person is in charge at an emergency scene. He or she will be the sole determiner of when the fire is controlled and out, when alarms and sprinklers are shut off, who may enter the building and when the building is safe to enter. The Chief has total control of the facility during the emergency and key staff should be in a safe position near the Chief to provide information that might be required to control the emergency.....When an actual fire occurs everyone must evacuate the building as quickly as possible. No entry should be made into the building until the fire Chief gives notification that entry is permitted.
[CP-21]

D'Arcy felt that the campus police had violated this written procedure because they had shut off the system long before the fire department was on the scene and before an officer had checked-out the fire scene (R-35, CP-21, 5T111-5T114, 6T26). It is unclear how D'Arcy could have known who or what silenced the first alarm since she was on the second floor stairwell entrance when the first alarm shut off (5T99).

D'Arcy thought that she had done everything correctly. However, she admitted that she was confused and frightened when the alarm was shut off since she could still smell smoke and students were returning to their rooms (5T104-5T105). Nevertheless, D'Arcy understood that written policy

and procedures required that until the fire department arrived on the scene, everyone (D'Arcy herself, mechanics, security guards, police officers and students) had their own roles at the fire scene. There is no prevailing authority. In other words, D'Arcy concluded that the campus police were not in charge and had no authority to direct her activity where the fire department had been summoned but were not yet on the scene (5T85-5T87, 5T91-5T92, 5T94).

D'Arcy's understanding, however, does not comport with Zuccarello's 1994 written directive (R-38) issued in response to a previous fire incident when D'Arcy's assistant manager, Mickelson had incorrectly silenced an alarm. D'Arcy had previously been informed of the appropriate role of campus police arriving on the scene of a possible fire.

On July 6, 1994, there was an activated fire alarm in one of the residence halls. In his investigation report dated July 7, 1994, Chief Zuccarello wrote that:

Following this incident, Lieutenant Still and I interviewed Ms. D'Arcy regarding previous fire incidents at the two residential facilities. Following this discussion I advised Ms. D'Arcy that today I observed that Mr. Mickelson [Assistant Manager of Housing Operations] had silenced the alarm signals prior to anyone investigating the cause of the alarm. I stated that this was a dangerous practice which must cease, and urged her to adopt an operating procedure directing that only a Rutgers Police Officer or the Camden Fire Department authorize the silencing of fire alarm signals following investigation of the cause for the alarm. She agreed to initiate this policy. [R-38, 5T125]

Zuccarello's 1994 report contemplated the role of the campus police as the prevailing authority in the event that the fire department is not on the scene, particularly in regard to the silencing of the alarms. Therefore, D'Arcy's decision to manually activate a second alarm because she thought the police had no authority to silence the alarm prior to the arrival of the fire department on the scene,

although perhaps well-intentioned, was not in compliance with existing procedures.

95. On May 6, 1996, Fire Chief Zuccarello sent a memorandum to the chief of police on the Camden campus Douglas Thompson setting forth University "policy and procedures with respect to response to activated fire alarms originating in our facilities," as follows:

Upon receipt of notification of an activated fire alarm, at the police communications center, a University Police officer(s) and other Public Safety units, if applicable, are immediately dispatched to the scene. Upon the first officer's arrival the fire alarm control panel or remote annunciator panel is checked to determine the location of the alarm's initiation, this information is then relayed by radio to police communications and other responding units. The officer may then attempt to reset the system to prove out a legitimate activation or a malfunction, or shall proceed to the location indicated on the annunciator. For ease of communication within the building, and to enable the officer and/or fire department to efficiently handle the situation, the audible alarm signals may be silenced manually; many of our systems are programed to automatically silence the signals

In New Jersey...common law provides that upon arrival of the fire department that agency is in full command and control...it has been established that upon the arrival of a University Police officer at a fire alarm or other emergency...the Police officer is in command...until properly relieved by...fire department commander...The Police officer, in this situation, is not subordinate to a faculty member, staff, student, or University administrator other than a Public Safety official. [CP-18]

This May 6, 1996 memorandum comported with the 1994 directions given to D'Arcy by Chief Zuccarello (R-38).

96. On May 9, 1996, D'Arcy received a letter from Thompson entitled "Interfering With Emergency Fire Procedure." The letter detailed the May 2nd fire incident and characterized D'Arcy's activation of the second alarm as a deliberate and wanton interference with police response procedures approved by the Rutgers fire department (CP-17). Thompson also objected to D'Arcy's "directing

verbal expletives at my officers while they are . . . performing their emergency assignments” and stated that D’Arcy’s actions could have caused the responding police officers to think that there were two fire emergencies and resulted in the summoning of unnecessary fire equipment. Thompson explained that proper procedure dictated that once the police arrive at the emergency scene, they were in charge and took control until the arrival of the fire department when the fire chief assumed command (CP-17).

In her May 10, 1996 response to Thompson’s letter, D’Arcy explained her version of the incident on May 2, 1996. She reiterated that her manual activation of the second alarm was done not to interfere with a police response but was in compliance with Zuccarello’s written instructions -- “Pull the fire alarm if not already sounding.” She pulled the alarm because that was what she thought she was supposed to do (R-34). D’Arcy continued:

It never occurred to me at the time that this was the routine University Police response to a fire emergency because to the best of my recollection, I have never, in my six years here, been in a situation where the alarms were silenced prior to someone determining the nature of the alarm. [R-34]

D’Arcy explained that she thought the alarm was silenced before Berrios, Amorim or McGriff had determined the nature of the situation. She wrote:

There was fire, there was smoke, and I pulled the alarm before any officer had arrived at the scene and checked out the situation. [R-34]

This explanation was inconsistent with D’Arcy’s testimony that she met Berrios on the second floor landing and directed him to the source of the fire emergency, namely apartment 203, before she silenced the alarm (5T95-5T96, 5T99). D’Arcy knew that the police were checking out the situation because she sent Berrios and Zambrana to apartment 203 to investigate the source of the fire

emergency (R-34, 5T102, 5T122). Relying on her understanding of Zuccarello's written procedures, D'Arcy acted independently of police authority on the scene because she believed that until the fire department was on the scene there was no prevailing authority (R-34). However, her understanding of those procedures was incorrect (R-38).

97. After Thompson's letter, D'Arcy and Riggs met with Thompson at the police station. Thompson explained that the May 6, 1996 letter was authored not by him but by Director of Administrative Services Gary Urban but that he, Thompson, agreed with its contents. D'Arcy was upset at the meeting and cried. After the meeting, she began to doubt herself. It seemed to her that everything she had always done, and done well, was suddenly all wrong and being criticized (CP-17, 3T78-3T81, 5T122, 5T124, 6T29).

d. August 1996 Theft/Search and Reprimand

98. In August 1996, two students reported the theft of money from their rooms (R-43, R-158, 5T160). On August 15, 1996, D'Arcy called a staff meeting attended by approximately 11 employees, mostly part-time summer workers, to discuss the thefts. D'Arcy tried to ascertain where each employee had been and to encourage them to work in pairs and never use master keys in order to avoid more drastic measures such as searches of their persons whenever they left the building (R-158, 5T161-5T163, 6T23).

One of the part-time summer employees, who was due to be laid off shortly, objected to D'Arcy's speech and felt that her constitutional rights were being violated because D'Arcy mentioned searching her (5T163-5T164). The employee was very upset, picked up a chair preparing to hit D'Arcy and was escorted out by a guard (R-158, 5T165).

The police were summoned and D'Arcy informed them that the staff was assembled in the lounge if they needed to speak with them or conduct a search (5T163).

99. As a result of the August 15 incident, an investigation was conducted by the police and Maradonna, although no grievance was filed by the union on behalf of the employees involved (R-44, 5T167). D'Arcy wrote Maradonna several times addressing this issue, but in none of her correspondence did she suggest that the investigation or its aftermath, namely a written warning to her, was motivated by anti-union animus (R-158, 5T165-5T166).

In an October 1, 1996 correspondence to Maradonna, D'Arcy wrote:

I believe you conducted an unbiased and thorough investigation and it appears I did not communicate to the staff what I intended. As a result, I hurt and offended a lot [sic] of people. I recognize there must be consequences for my poor judgement, regardless of my intentions. So do not hesitate, even though my perception of the events of that day are contrary to your findings. I accept that I may be the one who is unclear about what I said. Please let me know the results of your investigation, the nature of my offense...and what you believe to be the appropriate redress or sanction. I will deal with it. [R-43]

Subsequently, on December 2, 1996, Maradonna found that D'Arcy's behavior on August 15, 1996 regarding her handling of the thefts and the meeting with her custodial staff, was inappropriate and warranted a written warning and apology to the staff involved (R-44, 5T174). D'Arcy accepted the findings of the investigation and apologized (5T158).

In describing her behavior that day, D'Arcy testified:

... do I think I overreacted?

I think that, of course, afterwards I wished I had handled it differently.

I had upset somebody greatly, and people heard things that I definitely did not mean. [5T165]

e. August 1996 Denial of D'Arcy's Request for Time Off to Take Daughter to College

100. In August 1996, D'Arcy requested time off to take her daughter to college, but Dean Riggs denied the request. On the day that she was supposed to take her daughter, D'Arcy became ill and was out of work for six weeks (3T87, 6T23-6T24).

Riggs denied the request because she wanted D'Arcy to do student staff training that day. The training was supposed to have taken place earlier but was postponed because of a major campus fire which destroyed a floor in one of the buildings (6T23).

101. D'Arcy called Otzenberger, Norman and Chris Mowry about the denial and was told to file a grievance (6T24). D'Arcy made initial inquiries with the grievance committee of the Administrative Assembly but then decided not to file (6T49).

BEVERLY TARTER

Tarter Background

102. Beverly Tarter is a twenty-year employee of Rutgers. She holds a bachelor of arts degree from the University of Michigan and masters and doctoral degrees from Rutgers in the field of higher educational administration (9T120-9T121).

Prior to 1987, Tarter worked as head of the office of academic services in the Rutgers graduate school of education (9T120). Since 1987, she has been employed in the office of graduate and professional admissions on the Rutgers College Avenue/New Brunswick campus as an assistant director of graduate and professional admissions (CP-58 through CP-60, 9T120). Tarter also reports

on policy matters to Donald Taylor, University director of graduate and professional admissions (9T137, 17T6). She also reports directly to Associate Director Michael Holcomb on operational matters (17T6). Policy matters include long range planning. Operational matters relate to the day-to-day activities of the office (17T6).

There are four professionals, two administrative assistants and seven secretaries in the office (17T7, 17T15). Assistant Director Judy McCarthy is the fourth professional in addition to Taylor, Holcomb and Tarter (17T14-17T15).

103. Tarter has University-wide responsibility as principal recruiter for graduate and professional students except law and management students (9T133, 10T46). The other professionals in her office, Taylor, Holcomb and McCarthy, also engage in graduate recruiting activities (10T47-10T48).

Since approximately 1991, Tarter's duties and responsibilities have included directing and coordinating the recruitment effort, producing publications, speaking to students on and off campus and organizing activities to encourage Rutgers students to continue with graduate studies (R-117, 9T133, 10T9-10T10, 17T12-17T13). She also conducts minority recruitment activities (CP-58, CP-59, 9T133). Additionally, Tarter, together with her three professional colleagues, coordinates the admission and rejection of applicants and advises faculty and staff about admission procedures. This responsibility includes providing oversight for recommendations by graduate faculty particularly where the recommendation deserves a second review by a dean (17T14). Tarter is also responsible for producing the graduate application forms and maintaining the graduate web site (9T134). Her actual contact with students is limited to less than ten percent of her work hours. The rest of her duties include

among other things, the development of programs, talks with faculty, attendance at meetings, preparation of recruitment material and organizing recruitment events (17T13).

104. Taylor began his Rutgers career in 1962 assigned to the undergraduate admissions office. In 1965 he became director of the office of graduate and professional admissions with University-wide responsibilities for the graduate and professional admissions operations of the 16 graduate schools (17T3-17T4). These responsibilities include recruitment, admissions, publication of necessary materials, managing staff, providing policy direction to senior administrators, advising assistant deans and graduate faculty and maintaining statistical data for research purposes among other duties (17T5).

He is indirectly responsible for admissions in the two law schools and the graduate school of management in Newark (17T5, 17T142). Taylor works with the deans in these schools to develop consistent policies, procedures, enrollment goals and to ensure consistency with the other graduate schools (17T5-17T6, 17T142-17T143). Taylor reports to Dr. Joseph J. Seneca, University academic vice-president for academic affairs (17T6).

105. Taylor evaluates Tarter's performance on an annual basis and finds her an excellent employee (CP-58, CP-59, 17T62). In her 1994/1995 evaluation he wrote:

Beverly's overall performance in 1994 has been excellent. She has been exceedingly conscientious, has cooperated and coordinated well, and made significant contributions to the office. In recognition of the quality of her work, she will be recommended for a merit award. [CP-58]

The evaluation is also signed by Taylor's supervisor, Dr. Seneca. Tarter received a merit award as a result of the 1994/1995 recommendation and was notified of the award by Seneca in late May 1995

(CP-61, 10T60). The merit system award program is available to APS upon recommendation of the employee's supervisor based on performance reviews and involves the award of money, usually \$1,000 (21T166-21T167).

Tarter received many merit awards over the years (10T97). She has received a merit award almost every year (at least five) since her involvement with the CWA campaign, from 1994 to the present (CP-62, 10T60, 10T97-10T98, 10T105-10T106).

She understood that merit awards in her office were awarded on a rotational basis among the six or so eligible staff because Taylor did not believe in the program and wanted to be fair to everyone (10T97, 10T104). However, Tarter received several awards in consecutive years after 1994 (10T105).

106. In 1996, Taylor commended Tarter's performance for the 1995/1996 work year commenting:

Beverly's performance this past year was excellent. She does not hesitate to take the initiative, she works hard to ensure projects are completed, and coordinates well with other offices at the University. Especially in recruiting, Beverly is creative and resourceful and has become a strong advocate for minority admissions. Her work with the Administrative Assembly is commendable, especially her willingness to defend co-workers in grievance cases; however, she agreed to keep her committee involvement this year to one day a month (bringing the total Assembly time to about 1 ½ days a month) and one case per semester. Her working relationship with Michael was discussed, and she agreed to bring incidents that concern her to my attention so I could deal with them appropriately. [CP-59].

Also, in a section entitled "Goals for 1996/1997" Taylor noted that "[n]ew areas for minority

recruitment will be explored, but within the context of scarce resources. Indeed, much of the recruiting for 1996/1997 will depend upon available resources from the regular budget, from ad hoc requests to other offices and to the central administration” Taylor explained that although publications of a University-wide brochure and school-specific minority brochures among other items were important goals, the regular work of the office “ . . . must continue in a climate of scarce resources and heavy demands on professional time.” He concluded that Tarter’s goals all remained viable “ . . . with the understanding that completion of many goals depends on the availability of resources, and this office’s priorities” (CP-59). Budgetary concerns – scarce resources for minority recruitment and new publications – were not expressed by Taylor in Tarter’s previous annual appraisals (CP-58).

Administrative Assembly and CWA Organizing Effort

107. Tarter was a delegate to the Administrative Assembly. In the Assembly her duties consisted of recruiting new members and representing members in grievances. She was also a member of the policy and procedure committee (9T121-9T122).

In 1994 when D’Arcy became president of the Assembly, Tarter began discussions with her about problems with grievances, disciplinary actions and problems relating to University procedures like the reclassification policy (9T122). They started to explore unionization as a means of dealing with these issues (9T122). She and D’Arcy met with CWA representatives about bringing CWA to Rutgers (9T123).

108. Tarter contributed to the CWA newsletter, The Administrative Organizer (CP-6 through CP-11). Her name, together with others who had signed cards in support of the organizing effort, appeared in each issue. Additionally, her picture and the following quote (as well as the picture and

quote of five other employees) appeared in a November 1995 CWA mailing.

With a union contract, we would meet with Rutgers Administration and agree to specific policies that the Administration would follow. I am pleased about the upcoming vote because I believe it will give us an opportunity to have equitable policies that will apply to everyone equally. I'm voting YES! [CP-12, 9T123-20T124]

The CWA mailings were sent to Assembly eligible employees (the APS staff). As a result of the mailings, some employees spoke to Tarter about the unionization effort (9T124). Besides the mailings, Tarter expressed her pro-union support by keeping a CWA notepad on her desk, speaking during lunch periods to fellow administrators and speaking unofficially before and after Assembly meetings with interested employees (9T125).

109. All of Tarter's co-workers in the graduate admissions office were eligible to vote except Taylor (9T125). However, Tarter had discussions with Taylor about unionizing and what that meant for professionals (9T127, 10T60). Tarter and Taylor had different views. Tarter understood that Taylor had been a member of a library board in South Brunswick when CWA was successful in organizing the professional employees there (9T127-9T128, 17T69). Taylor had been against the unionizing effort and did not feel that it benefitted the library. Taylor told her that he did not want the University involved with CWA and was not supportive of the 1995 organizing campaign (9T127-9T128, 17T71).

Taylor was not against the APS staff organizing *per se* but felt that CWA would not be good for professional employees (17T71). Taylor based his opinion on experience as a senior administrator, discussions with other senior administrators and feelings about what a union could or could not do for

professional staff at Rutgers (17T72). The only University-sponsored activity in response to the 1995 CWA unionization effort Taylor attended was a meeting of senior administrators to brainstorm ways of improving conditions for APS employees (17T74-17T75).

According to Tarter, Taylor never expressed any concern to her about her personal involvement with CWA (9T128).

Taylor never discussed Tarter's union activities with Holcomb, Seneca or Vice-President Norman (17T60).

110. Tarter also had conversations about the CWA effort with her colleagues across the University and many others who were not eligible to vote in the CWA election such as various deans (9T128). According to Tarter, many urged her not to get involved "... with the CWA or any unionizing effort, that it would not bode well for [her] in [her] career aspirations at the University and [she] would be hurt by it." (9T129, 10T67). Tarter refused to identify who told her this because they are still working at Rutgers and "... I have not asked them if I could do that. I don't care to implicate anyone who has not given their permission. I can give plenty of names of people who have retired" (9T129, 10T68). On cross examination, Tarter only identified three retirees but would not "... implicate anyone who still works at the University whose job could be in jeopardy if I implicate them" (10T69).

The retired individuals who warned her not to be involved in the CWA campaign were Bird, Norma Sawyer, an associate of Bird's and an assistant director in the registrar's office, and Edith Frankel who was the registrar on the Newark campus (9T129-9T130, 10T67-10T68). Frankel and Sawyer held positions below Tarter and were eligible to vote in the CWA election (9T129, 10T67-

10T68). Bird was originally eligible to vote but protested his eligibility and was removed from the list of eligible voters (8T84). None of these individuals were involved in subsequent employment actions involving Tarter (10T72).

Charging Party contends employer hostility to Tarter's union activities may be inferred from the alleged conversations warning of adverse consequences to her career based on her involvement in the CWA campaign. I cannot draw that inference.

I cannot rely on Tarter's conversations with Bird, Sawyer and Frankel. Sawyer and Frankel did not testify at the hearing. Although Bird testified for Charging Party, he was not asked about any conversations with Tarter in which he allegedly warned her not to get involved in the CWA campaign. Thus, I find Charging Party's failure to call Sawyer or Frankel or to question their own witness, Bird, on this issue undermines the inference CWA seeks.^{30/} Tarter's uncorroborated testimony is insufficient to support the inference of employer hostility.

Even if Tarter's testimony regarding the conversations with these three individuals were credited, I would consider it insufficient evidence to find that the University was hostile to her union activity. Sawyer, Frankel and Bird were co-workers. Their discussions with Tarter were no more than speculation and workplace discussion which cannot be attributed to anyone in the administration. None of these individuals, by Tarter's own testimony, had the authority to affect Tarter's employment nor did they have any involvement in any employment decisions which subsequently impacted her (10T72).

^{30/} When a party fails to call a witness who may reasonably be assumed to be favorably disposed to the party, an adverse inference may be drawn regarding any factual question on which the witness is likely to have knowledge. McCormick, Evidence §272 (3rd ed. 1984); International Automated Machines, Inc., 285 NLRB 1122, 129 LRRM 1265 (1987).

Tarter's testimony regarding conversations with unnamed administrators concerning her participation in the CWA organizing effort is unreliable. Her refusal to disclose individual names because of concerns that their jobs would be in jeopardy might be legitimate, but also raises suspicion. A witness who withheld information runs the risk the trier of fact may not be able to draw the inferences she seeks. Such is the result here.

111. As an Assembly delegate, Tarter met regularly with Stephen Otzenberger between 1995 and 1997 while he was director of personnel services and University Vice-President Norman's representative at the Assembly. During their discussions Tarter spoke to Otzenberger about her union activities (9T130). Otzenberger briefed Norman regularly about Assembly activities (6T61-6T62, 9T130).

After the CWA lost the election in December 1995, Otzenberger had lunch with Tarter and Chepitch in Newark to discuss their Assembly activities, encouraging them to continue their past efforts. During this meeting Tarter and Chepitch advised Otzenberger there was a new union organizing effort. Tarter thought Otzenberger was surprised to hear this (CP-14, 9T130-9T131). This effort, known as RAPSS, was circulating a pamphlet about the new RAPSS/CWA initiative in March of 1996 (CP-14, 4T45). The Tarter-Chepitch-Otzenberger lunch meeting occurred around the time that the RAPSS pamphlet was circulating (9T131).

112. In September 1996, President Lawrence wrote a letter to the University community about the Administrative Assembly; he noted his support for the Assembly in its role as a representative body in communicating the interests and concerns of the APS staff together with recommendations to the University president (R-32). In the letter, Lawrence encouraged the support of the entire University

community for the Assembly delegates, especially by providing release time for delegates to attend Assembly committee and general meetings and additional time-off for Assembly officers and committee chairs, as may be necessary (R-32).

In response to a September 1996 letter from President Lawrence in support of the Assembly, Tarter e-mailed Otzenberger commenting: “Kudos to you, Steve. This is, perhaps, the best letter yet from the Pres. Thanks for your help in effecting [sic] it.” (R-32, R-63). (See also finding of fact no. 54).

113. Tarter recalls having conversations with Norman about unionization but she does not recall the dates or where they took place. She and Norman spoke often and “. . . he knew [she] was a unionizing leader” (9T132).

Budget Cuts and the Graduate Admissions Office

114. In the early to mid-nineties there were a series of budget cuts throughout the University as a result of decreased State funding (17T27). Also, in 1996, with the implementation of President Lawrence’s strategic plans known as Strategic Resource Opportunity Analysis (SROA), each department at the University was required to cut a percentage of its budget to fund efforts to leverage faculty and dean initiatives for new projects aimed at improving academic and research opportunities (10T49-10T50, 11T77, 17T15, 17T26, 17T75-17T76). (See finding of fact no. 6).

Because of budget pressures (decreased funding and SROA), the 1990’s resulted in a number of changes in the office of graduate and professional admissions, including staff reductions (R-118, R-119, 17T15). For example, in 1990 the office consisted of four professional twelve-month employees,

Taylor, Holcomb, McCarthy and Tarter^{31/} and two administrative assistants, Abramson and Mowry (R-118, 17T18).^{32/} The staff consisted of eight secretaries (one was a ten-month employee), a part-time (less than 20 hours) clerk typist and three part-time hourly employees (principal secretary, senior clerk typist and clerk typist) (R-118, 17T19-17T20). There were also two seasonal employees hired to meet demands of certain admissions cycles (R-118, 17T20).

Nine years later (1999), the office staff still consisted of four professional employees, but two (Tarter and McCarthy) were ten-month employees (R-119, 17T22). The 1999 staff also consisted of seven secretaries, three holding ten-month positions (R-119, 17T24). These changes came about for the following reasons: In 1994, one full-time secretary was laid off in order to meet the next years budget target (R-120, 10T49, 17T28-17T29). Two of the three ten-month secretaries previously held twelve-month positions in 1997 and 1998 (17T24-17T25, 17T135). Both positions were reduced in response to budgetary concerns (17T25).^{33/} There were no part-time positions in the staff (R-119, 10T49).

Sometime during the 1990's, Taylor upgraded Tarter's and McCarthy's positions to assistant directors and a higher salary range (R-118, R-119, 17T125-17T128). The assistant director position

^{31/} Tarter's last name in 1990 was Davidson (17T18, 17T125).

^{32/} Two directors of undergraduate admissions on the Newark and Camden campuses, respectively John Scott and Debra Bowles, also reported to Taylor (17T18).

^{33/} One position was changed to reduce the budget and the other to provide more spending flexibility to hire seasonal employees (17T25). For instance, at the beginning of the 1997/1998 fiscal year, Myrna Zitomer, a twelve-month secretary, was reduced to a ten-month position to shift additional dollars to hire employees during the busier months of December through March (17T55-17T56). She was not given the choice of working flexible hours in lieu of taking the summer off as Tarter was allowed to do when her position was reduced in 1997 (17T56).

required a master's degree; both Tarter and McCarthy had doctorate degrees (17T129). The higher title and salary range reflected the complexity of the tasks they were already performing. It was not a new assignment or delegation of new duties or responsibilities (17T126). Both Tarter and McCarthy worked with the same secretarial support staff and were broadly assigned to the recruitment effort but had different specific responsibilities (17T129).

McCarthy became a ten-month employee in 1992 when, during budget cuts, she volunteered to reduce her position (17T22). Like Tarter, McCarthy was an assistant director and professional admissions officer (17T23). Unlike Tarter, McCarthy's major responsibilities were data processing and computer support (17T23). Both responsibilities increased during the 1990's with an increasing emphasis on technology to improve job efficiencies at the University (17T23). Following the reduction, McCarthy had to cut back on the time she spent overseeing the non-degree graduate study programs (17T23).^{34/} In 1998/1999, McCarthy requested to change her position back to twelve-months but Taylor refused for budgetary reasons (17T131).

In September 1997, Tarter became a ten-month employee as the result of a budget cut.

The SROA Budget Cut

115. In the spring of 1996, Seneca's office notified Taylor that his budget for the next fiscal year (1996/1997) needed to be reduced by three percent to accommodate the demands of the President's SROA initiatives (11T61, 17T30, 17T76).^{35/} The three percent reduction applied to

^{34/} The non-degree program encourages individuals to attend graduate courses without formal admission to a degree program (17T24).

^{35/} Notice of budget cuts are usually given less than a year and sometimes less than a few months (continued...)

departments University-wide (17T76).

Taylor had several discussions over a couple of months with Holcomb about how the office was going to meet the SROA target (17T30-17T31). Taylor and Holcomb decided early-on that there was nothing in the operating budget to cut. The operating budget was at an absolute minimum due to previous trimmings throughout the early 1990's. They decided any cuts would have to come from personnel (17T31, 17T50, 17T139, 17T142, 17T145).

Taylor and Holcomb discussed several possibilities. They never discussed, however, Tarter's union activities (17T32, 17T82).

116. On April 30, 1996 Holcomb sent Taylor a confidential memorandum outlining recommendations on how the graduate admissions office could meet the SROA reduction while preserving the operating budget (R-121). The memorandum detailed three options affecting personnel changes in order of priority (R-121, 17T33-17T34, 17T81).

Holcomb's first recommendation was to reassign Tarter to a ten-month position (R-121, 17T33). There were only two assistant directors and Assistant Director McCarthy's position was previously reduced in 1992 (17T33).

Holcomb justified the proposal because it would

. . . yield a good part of the budget reduction required, limit the number of positions affected (at least for this go'round), and, potentially, allow for greater flexibility in using clerical overtime during peak periods. With regard to the actual duties and responsibilities of the position, and the ebbs and flows of the admission cycle, a 10 month redesignation of this

35/ (...continued)
in advance (17T152).

line would not impair our professional responsibility to perform recruitment activities (which are limited and specialized in any case), application preparation, and school liaison work. It would also put both Assistant Director positions on an equal, complementary, level. [R-121]

Holcomb's second recommendation was to reassign one twelve-month, range 13, clerical position to a ten-month position but explained that the office would have to deal with a heightened sense of vulnerability and attendant morale problems (R-121).

Holcomb's final recommendation was to "sacrifice our only part-time position" by terminating Senior Clerk Typist Edith Belsky (R-118, R-121, 17T34).

After receiving Holcomb's April 30 memorandum, Taylor wrote Seneca on May 1 explaining the implications of a budget cut returning three percent to the central administration:

Three percent of the total Graduate Admissions budget is \$21,523. A reduction this large would have to come from personnel. The nonpersonnel budget of \$171,449 is too small to absorb a cut of \$21,523. Indeed, the nonpersonnel budget has already been reduced over the past seven years. Therefore, the \$21,523 would be achieved by a combination of a layoff and changing two twelve month positions to ten months.

The consequences: Despite the introduction of technology and the reengineering of office procedures, several graduate programs are unhappy with the current speed of graduate admissions operations at peak periods. Reducing personnel will exacerbate this situation. Even with innovative management and heroic staff efforts, the work of the office will become slower. This in turn will lead to: 1. the loss of good students (who will receive earlier offers elsewhere), [2.] the degradation of the University's reputation in graduate education, and, 3. more admissions work done at the programs level (which will require reallocation of resources to support it). [R-123]

117. Before making any decisions based on Holcomb's recommendations, Taylor consulted with the personnel office to determine what the policies and practices would be if he chose to layoff a COLT (union representing secretaries) employee versus an administrative employee and what benefits would accrue to each (17T85, 17T87). Other than the four professionals (Taylor, Holcomb, McCarthy and Tarter) and two administrative assistants (Mowry and Abramson), the rest of the graduate admissions office staff was represented by a union (17T92).

Taylor also calculated the savings for each personnel action (R-123, 17T43). Belsky's layoff saved \$14,331, while the reduction in Tarter's position saved \$9,930.89 (R-123, 17T43, 17T150). Together, the savings was more than enough to cover the required three percent budget reduction or \$21,523. The savings for reassigning one clerical position to a ten-month position was only \$5,044 (R-123, 17T43). Taylor rejected this recommendation because the savings were not enough to meet the budget target (17T34). He decided to follow Holcomb's first and third recommendations, reduce Tarter's position and lay off Belsky (17T34, 17T150).

Taylor concluded that changing one professional from twelve months to ten months provided both budget savings and caused the least impact to the office (17T43). He decided that professional staff are expected to work hard and well without the same hourly restrictions as clerical staff (17T43-17T44). Additionally, it would be easier for other professionals on the staff to back each other up (17T44). Taylor previously had a good experience with reducing Assistant Director McCarthy's position in 1992 (17T151). While Tarter could have been reduced to less than twelve months but more than ten months, the University had a practice of either ten or twelve-month positions (17T151).

Taylor only considered the three Holcomb recommendations. He did not consider reducing

administrative assistants who were at the top of their salary guides by one or more steps on the guide to effectuate savings. He did not consider withholding salary increases which employees were scheduled to receive. These were not allowable options when he was reducing his budget (17T93, 17T149). He did, however, consider reducing his and Holcomb's positions but rejected the idea (17T94).

118. While Holcomb and Taylor were discussing how best to meet the SROA budget reduction, budget discussions involving administrative staff input began in January or February 1996 (10T94, 17T79, 17T95). In early spring 1996, Tarter anticipated that Lawrence's initiatives on minority recruitment would result in more money in the admissions office which in turn would result in her working harder in the coming year, however, there was no additional money for minority recruitment (9T143-9T144, 17T95 17T122).

During one administrative staff budget meeting before Tarter's position was reduced, Taylor indicated that he might cut Tarter's secretary to ten months (9T146, 10T94). Tarter was "... appalled at that because [she] didn't know who would do the work" (9T146, 10T94-10T95).

June 19, 1996 Meeting between Taylor and Tarter

119. On June 19, 1996, Taylor notified Tarter and Belsky of the personnel actions he decided to take in order to meet SROA budget reduction targets for the 1996/1997 fiscal year (CP-63, R-122). Taylor and Tarter met privately to discuss the decision. Taylor did not meet with Belsky before sending a notification letter because she was a part-time employee and was not working in June (17T99-17T100, 17T118).

At the meeting, Taylor handed Tarter a letter informing her of his decision to change her position from twelve months to ten months effective September 1, 1996, as a result of budget cuts

(9T145). Tarter was very emotional and surprised (9T146). This was the first time she learned the budget cuts would affect her (9T145, 10T95). Although Tarter anticipated there would be reductions in support staff positions based on the early spring administrative staff budget discussions, there were no previous discussions at staff meetings that budget cuts would impact the administrative staff (10T95). Taylor did not discuss the reduction in Tarter's position at a general staff meeting because he considered it a highly sensitive personnel matter (17T80).

Tarter contended there had never been a reduction in hours for the professional staff in the graduate admissions office (10T96). However, she also testified that as a result of a budget cut in 1992, the other assistant director, McCarthy, volunteered to reduce her position to ten months (10T90, 10T103). Whether McCarthy's decision was voluntary or not, the reduction was triggered by the necessity to meet a budget cut and resulted in a savings; therefore, it constituted a reduction in hours for the professional staff (10T103).

Regardless of whether it was the first reduction of a professional staff position, Tarter felt Taylor's decision, which was made without any input from her, was a departure from his previous budget cut determinations. There was usually a discussion among the administrative staff as to the best way to meet budget cuts (10T91). Tarter felt that his unilateral action ran counter to training which the office had just received from the University's Quality Communications Initiative (QCI) Team in the months preceding the decision to reduce her position (10T93, 10T95). The training emphasized team building and office collegiality (10T94). Tarter's conclusions are unsupported. There were discussions among the administrative staff about the budget cuts in the early spring. As a result of those discussions Tarter anticipated support staff cuts. No evidence suggests she was told or had reason to believe

professional staff might not also be affected. Also, Taylor's actions did not run contrary to the QCI training because he did reach out to staff for input on the budget decision.

120. After learning of the reduction in her position, Tarter asked Taylor how she would pay her mortgage (9T146). Taylor told her "... he would see if he could have it [the personnel action] delayed to the following year because it was such a shock" (9T146). Taylor had already determined it would not be fair to give Tarter only two months notice that her salary was being reduced (17T48). Taylor, on his own initiative, argued this position to Bob Cooney, Seneca's executive associate, who conveyed Taylor's feelings to Seneca (17T48-17T49, 17T151). Subsequently, Taylor fought hard to defer the implementation of Tarter's reduction (17T151). Seneca accepted Taylor's arguments and agreed, on behalf of the administration, to defer the reduction in Tarter's position for one year (17T48).

At the June 19 meeting, Taylor told Tarter that he was able to defer the effect for one year until fiscal year 1997/1998 by moving the effective date of the reduction to the beginning of the academic year on September 1, 1996, so that Tarter would not lose salary for the summer months of July and August 1996 (9T151, 10T15, 10T74-10T75, 17T51). Taylor gave Tarter the choice of either taking the summer of 1997 off (the academic year ended August 31, 1997) or adopting a flexible schedule during 1996/1997 whereby she would give back the equivalent of 40 working days (17T52). After a day or two, Tarter informed him that she chose to have a flexible schedule taking Fridays off (17T52). Taylor agreed to accommodate Tarter even though there was no rule or policy requiring that he do so (10T77).

During the meeting, Taylor also explained that the action was not reflective of Tarter's job performance, "[r]ather, it is the result of an extremely difficult budget situation" (CP-63, 17T63). He

was not happy about having to make this decision (17T101). Taylor next explained that the reduction was necessary to meet the SROA target and that the intent of the University was to have SROA reductions take effect July 1, 1996 (17T50-17T51, 17T100).

121. Taylor took notes describing the June 19, 1996 meeting (CP-64, 10T64, 17T101).

Tarter obtained a copy of the notes accidentally when she was working on a project with Taylor; she received a computer disk from him containing the notes of the meeting. Tarter never told Taylor she had his notes (9T148, 10T61-10T63, 17T147). The notes stated:

June 19, 1996. Told BT [Beverly Tarter] her position would be changed to 10 months effective September 1, 1996. Explained I was able to keep her this summer (although intent of central was to begin 10 month immediately.) She took the news professionally, although questioned why her position and not others. She felt she worked harder than most others in the office. I explained it was my decision, a difficult one made after consultation and consideration of other plans. I noted the clerical staff were core to delivery of services, that at least two would have to be changed to 10 months to provide the savings necessary to make up the 3%, that other professional staff would have to work harder to make up for her position being changed to 10 months, that some professional responsibilities would not be done. BT felt her time at Rutgers, her good work in GA [Graduate Admissions], should count for something. BT said the 10 month position would be a financial hardship. I told her that the change was definite for the foreseeable future, to not count on it being changed back to 12 months even if additional resources became available (DA [Dot Abramson] retire, for example). [CP-64, 9T149]

The notes essentially comported with Tarter's memory of the meeting except she remembered Taylor telling her that the change was a "done deal" and she could do nothing about it because he had sent the paperwork to personnel (9T146, 10T65, 10T73). Tarter understood "done deal" to mean that she had no avenues of redress and the University had approved Taylor's decision. Therefore, she did

nothing about it (10T99).

Tarter also recalled Taylor explaining that even if budget resources were restored it would not impact his decision because the money saved from the reduction in Tarter's position was diverted to other things, such as computers and the hiring of extra help (10T101). When Tarter mentioned the possibility of another employee (Dot Abramson) retiring, Taylor emphasized that the reduction was still necessary (10T102-10T103, 17T52-17T53, 17T105, 17T113, 17T117).

Taylor did not recall using the term "done deal," but his assessment of the fiscal reality of the University for the long term was there was no possibility of Tarter returning to a twelve-month position (17T111, 17T119). He communicated this to Tarter at their meeting (CP-64). Taylor did not want Tarter holding out any false hope (17T154). Taylor knew that Abramson would eventually retire but wanted Tarter to understand that the reduction in her position was a separate matter; things were not likely to change in the near future (17T109, 17T114, 17T153-17T154). He considered it fortunate to have gotten the one-year deferment in the budgetary give-back of Tarter's personnel action (17T154).

Taylor's assessment proved accurate. Although Dot Abramson retired about a year later from her twelve-month position as administrative assistant to the associate director, her position was filled with another twelve-month employee, Linda Costa, who was already working in the office (CP-64, 9T152, 17T132). Taylor then moved other employees from the office to fill Costa's vacated position (17T135, 17T137). There was no additional budget impact because the employees were filling positions already in the budget (17T137-17T138). Also, although Abramson was at the highest salary step in her range when she retired and her replacement was at a lower range, there were no salary savings in the office budget, the difference in salary was returned to central administration (17T147).

After Abramson retired, Taylor decided her job duties could not be fulfilled in ten months owing to its key responsibilities for foreign admissions at the University. Therefore, he did not use that opportunity to reduce the position to ten months and make either Tarter or McCarthy twelve-month employees (17T53, 17T112, 17T138, 17T148).

It is not necessary to resolve the minor variations of Tarter's and Taylor's recollections of the June 19 meeting. Both Taylor's contemporaneous notes and their respective testimony support that Taylor communicated to Tarter his decision was final and not likely to be changed in the near future. Because of the budget picture, he wanted to make sure she held no false expectations about her future and would plan accordingly. Tarter decided not to appeal the decision.

The Impact of the Budget Cut

122. Taylor sent a memorandum dated June 20, 1996, to Bob Cooney (executive associate to Seneca), together with his budget worksheets for the 1996/1997 fiscal year. It reflected, among other items, the \$14, 331 realized from the Belsky layoff which was designated as a SROA return to central administration (R-124, 17T45-17T47). The budget sheets, however, did not reflect the salary savings from the Tarter personnel action because it had been delayed for a year (17T48-17T51).

Since Taylor decided that deferral of the Tarter personnel action for one year was important, he also did not fight to recover the extra \$2,000 that reduction represented to his over-all three percent budget reduction. The three percent savings required a \$21,523 give-back to central administration, while the Belsky layoff and Tarter reduction totaled approximately \$24,261 (R-153, 17T151-17T152). Taylor did not want to get embroiled in a negotiation with central administration which might negatively impact his attempt to defer the Tarter action for one year (17T151-17T152).

Minority Recruitment and Tarter's Role After 1996

123. While Taylor was considering reducing Tarter's position in 1996, at least 50 percent of Tarter's job responsibilities concerned minority recruitment (9T141, 10T15, 17T123). McCarthy and the other professionals participated in minority recruitment, but Tarter took the lead role (17T123).

Minority recruitment was always a particular concern and focus of the University (10T56, 11T55). For example, in response to the effort to recruit minority students, Kate Stimpson, dean of the graduate school, helped establish the minority recruitment council sometime prior to 1994 (10T54-10T57). Minority recruitment in general became more difficult after President Lawrence's November 1994 comments about minorities and testing (R-58, 9T141, 17T120). For instance, minority students turned down scholarship offers because of the remarks. Also, when Tarter attended large recruitment events around the country, students spoke to her explaining that they had seen the publicity surrounding Lawrence's remarks and were not sure that Rutgers was the kind of place they wanted to attend (9T141-9T142).

President Lawrence responded to the situation by developing a strategic plan containing a number of initiatives including increased funding for minority student fellowships. He expressed the need to increase minority recruitment and the percentage of minority students at Rutgers (CP-65, CP-66, 9T142-9T143). This effort did not result in additional funds to promote student recruitment or provide fellowships for minority recruitment (17T122).^{36/}

^{36/} Monies for professional school fellowships for minority and disadvantaged students, recruitment fellowships, and other forms of financial assistance are not part of the budget for the office of graduate and professional admissions (17T147).

On June 9, 1995, the Rutgers board of governors approved a multi-cultural blueprint aimed at improving student life at Rutgers. President Lawrence issued a special report containing the full text of the blue print (CP-66, 10T24). In that report he explained that:

Many of the concerns raised across the campuses are attributed to a shortage of resources needed to accomplish important objectives in the area of multiculturalism. In some cases the loss of resources in recent years has slowed our progress. These funding problems are the result of the most severe and prolonged period of state funding cuts in the recent history of the university. In the past seven years, Rutgers has seen a \$92 million, or 37% shortfall in state support. The effects of this staggering loss of state funding have not been limited to our effort in multiculturalism; all services and programs across the university had to be cut back. [CP-66]

Nevertheless, despite budgetary concerns, Lawrence emphasized in the report that the University would continue to seek additional funds and consider diversity a high priority (CP-66).

In September 1996, the University issued an implementation progress report on its strategic plans. It included a section entitled "Diversity" which reiterated the promotion and support of a diverse student and faculty population must be one of the University's most important goals in the next century (CP-65).

Minority recruitment remained an ongoing concern and priority. Budget constraints had a University-wide impact throughout the nineties affecting all areas of its operations including the minority recruitment effort.

124. After September 1996 and the reduction in her position, Tarter continued to be involved in activities relating to recruitment of a diverse student population. Her activities included participation on the minority recruitment council (10T13-10T15, 10T29, 17T123). She also fielded inquiries from

various departments and individuals about minority recruitment (10T29).

According to Tarter, the negative effects from Lawrence's 1994 comments on minority recruitment continued for several years (10T20-10T21). Despite the strategic plan and its initiatives, Tarter contends she lost minority students in her recruitment efforts. Between 1997 and 1999, she believed it was difficult to attract students who were offered money under the Ralph Bunch Fellowship program which is awarded to minority students to attend Rutgers. As a result, the University had to dip more deeply into the runner-up lists to find candidates (10T21-10T22, 10T58). Tarter attributed this phenomenon to the continuing impact of Lawrence's statements (10T22-10T23).

Tarter conceded, however, that between 1992 and 1998, the national trend showed a decline in the total applicant pool for graduate and professional schools. The trend affected both minority and non-minority students. The trend only reversed in 1998 (10T57). During this period when Tarter had to dip more deeply into the runner-up list for Ralph Bunch Fellowship recipients, there was increased nationwide competition to recruit topnotch minority students (10T58). Rutgers had to compete for students with institutions that had greater resources to attract the most desirable candidates. This was true for both minority and non-minority students (10T58-10T59).

Taylor was responsible for maintaining statistical data concerning admissions. It was his impression that from 1994 to 1998, as a percent of the total applicant pool, there was no change in admissions for minority applicants to the University (17T59-17T60).

Despite Tarter and Taylor's differing views on minority recruitment, President Lawrence's 1994 comments were among several factors impacting minority recruitment at Rutgers in the latter half of the 1990's. Budget constraints and a declining general applicant pool for graduate schools also

affected recruitment. These factors made recruitment in general, and minority recruitment in particular, more difficult.

Impact of the Decision to Reduce Tarter's Position

125. On September 1, 1997 (Taylor had successfully delayed the reduction in position for one year), Tarter became a ten-month employee (9T152). The ten month position represented a \$10,000 loss in salary plus a reduction in pension contributions (10T18).

Tarter contends that her participation in office decision-making decreased after the reduction of her position (10T18). However, as a result of the reduction and Tarter's taking Fridays off, Taylor did not hold staff meetings on Fridays so Tarter could attend (17T57). Staff meetings are attended by the professionals and the two administrative assistants and are held every two weeks or monthly depending on the time of year (17T56-17T57). Also, when Tarter is on the road recruiting, staff meetings are not held because Taylor wants input from all professional staff (17T56-17T58). Other than the decision to reduce Tarter's position, no facts support Tarter's contention that her participation in office decision-making decreased.

According to Taylor, the reduction has not impacted the minority recruitment effort (17T123). When the position was reduced, Taylor stressed to Tarter that she had to maintain the same levels of activity in that area and finds that she has done so (17T123-17T124). Although Tarter has less time to spend on all of her duties and responsibilities, Taylor feels Tarter gets all of her work done efficiently (10T16, 17T63). For example, she carried out as many programs as she had in the past but had less time for the development of new minority recruitment programs (10T17). However, if there was a recruitment event which she was not able to attend, other professionals in her office covered the event.

The three other professionals in her office, Taylor, Holcomb and McCarthy, also engaged in recruiting activities (10T47-10T48).

Finally, as a result of the reduction, Tarter ceased her volunteer activities, e.g., her activities in the Administrative Assembly including her representation of employees in grievance proceedings (10T18). She no longer worked extra hours because she felt that the University no longer valued her services (10T19).

Tarter Application for Law School Admissions Director

126. On September 14, 1998, Tarter applied for the position of law school admissions director at the University (9T155, 10T39, 10T78-10T79).

Tarter felt she brought several qualifications to the law school admissions director position, including her twelve-years experience in graduate admissions which required her to “. . . admit, reject, counsel and advise potential graduate students,” her knowledge of the University, and her doctorate degree (10T40). In addition, Tarter had a “little” familiarity with law school admissions and had talked to students about the law school when she was recruiting and there was no law school recruiter present (10T41, 10T46).

Tarter did not receive an interview for the position (10T41). More than 100 resumes were received by the search committee (R-64). Anita Walton, an external candidate, was hired for the position (10T89). Tarter was surprised that she did not at least receive a “courtesy interview” as an in-house candidate because in Tarter’s opinion, the person who was hired for the position was not as well qualified since she had no experience with graduate student admissions, only with undergraduate

student admissions (10T43-10T44).^{37/} Tarter admitted, however, that prior to the 1995 CWA campaign, she applied for various University positions for which she was qualified but did not receive interviews for most of them (10T45, 10T84).

On or about December 14, 1998, Tarter received a letter from Frances Bouchoux, associate dean for admissions at the law school in Newark (R-64). The letter thanked her for her interest in the position, informed her that the search committee had reviewed more than 100 resumes and completed the selection process. It then continued that although impressed with her credentials, the law school was unable to pursue her candidacy further (R-64).

SCOTT RANDOLPH

Randolph Background

127. Scott Randolph was previously a graduate student at Rutgers and worked as a live-in counselor for Job Corps. At Job Corps, he focused on affirmative action and minority recruitment which eventually became the primary concentration of his career (9T8-9T9). Randolph was hired by Rutgers in 1966 as a minority recruiter in the undergraduate admissions office in New Brunswick. He remained there his entire career, although his titles changed over the years (9T9). He was the first minority recruiter at Rutgers (9T53-9T54).^{38/}

37/ On direct examination Tarter identified Doris Holohan who worked in the office of undergraduate admissions as the successful candidate but on cross examination she testified that she incorrectly identified Holohan who she stated was the successful candidate for another position (10T89).

38/ It is unclear from the testimony whether Randolph held an official position as minority recruiter or simply functioned as such. Apparently, he was replaced in that role by an individual named Willie Hamm who was appointed to the position of minority recruiter after the title was officially

(continued...)

After the offices in admissions were amalgamated in 1977, Randolph became a chief admissions officer II (9T51). Finally, in the late eighties until he left the University in May 1997, Randolph held the title of senior admissions officer II (9T31-9T32, 9T52).

Randolph and the CWA Campaign

128. In the spring of 1995, Randolph read an article from the Administrative Assembly that indicated the Assembly was moving in the direction of unionizing (9T26-9T27, 9T59-9T60). Randolph was never a representative to the Assembly. He had been approached over the years to become a representative but felt that as an advisory body it had no power (9T27).

After reading the article, Randolph attended a meeting about CWA organizing. Thereafter, he attended regular meetings with the ten or twelve people that were the primary organizers of the union effort including Maureen D'Arcy, Jane Chepitch and Beverly Tartar as well as CWA staff personnel (9T28, 9T63). The meetings were usually held in union headquarters (9T26-9T28).

At one of these meetings, attendees were asked to write letters to explain their support for the union movement (9T29). Randolph wrote a letter which was printed in the August 21, 1995

Administrative Organizer (CP-10, 9T60). In the letter he explained that he is "not a union person by inclination . . . [I] was secure knowing that I could always count on the strong benefits package that went with my job With the new Governor and legislature, I can no longer feel secure" (CP-10). Randolph then urged others to join the union effort (CP-10). Additionally, during some lunch hours,

38/ (...continued)

created (9T54). Randolph was not a candidate for this newly created position (9T54). This distinction is not necessary to resolve since it is undisputed that minority recruitment was always one of Randolph's duties as an Admissions employee at Rutgers.

Randolph spoke to staff both individually and in groups in his building and at other locations such as the Busch Student Center and Cook College about the organizing effort (9T29-9T30, 9T60-9T61).

Randolph's picture and pro-union quote also appeared in a CWA mailing sent in November 1995 (CP-12). Staff in his office and adjoining registrar's office came to talk to him as a result of seeing his picture (9T30). For example, Randolph told Richard Bird what he was doing, but when Bird did not express strong support for the union movement or even interest in union activity, Randolph backed off (9T31).

Corinne Webb

129. In September 1996, Corinne Webb was appointed to the newly created title associate vice-president of enrollment management and came to the office of undergraduate admissions on the New Brunswick campus. Between 1980 and 1996 she held the position of associate provost at the Rutgers Camden campus (20T4-20T5, 20T15).

Webb was told about the new job opening by Dr. Nancy Winterbauer (20T72). Winterbauer asked Webb if she was interested in taking the position because the University was taking on a new focus and was interested in someone who "... could put a program together that in fact had an enrollment management focus, and thus they were looking for someone who had strong managerial experience, it was no longer going to be the focus of the University just to admit but to enroll" (20T73). In other words, the University wanted not just to accept students for admission but to actually enroll them .

Her primary responsibility in her new position was to oversee the office of undergraduate admissions with staff on all three main campuses in Newark, Camden and New Brunswick (20T4).

Her staff consisted of 72 full-time and part-time employees with an allocated budget of about 68 lines (20T16, 20T77). Senior Associate Director Ian Hodos was Webb's second in command in the organization hierarchy (20T77).

Before taking the position, Webb had no experience working in admissions (20T60, 20T67). As associate provost in Camden, however, Webb had significant managerial experience. Her responsibilities included overseeing the campus budget, assisting Provost Dr. Walter Gordon in the development of new academic programs and generally providing direction and assistance to the administration regarding employment policies for faculty and staff (20T4-20T5, 20T60, 20T140). Webb took the job about a week after Winterbauer contacted her (20T73). Webb never had a transition period with her predecessor Elizabeth Mitchell nor did she consult with her prior to taking the position or when she subsequently restructured the office (20T74, 20T77).

130. Webb learned of the 1995 CWA organizing effort during her tenure in Camden (20T61). Her general impression was that the University believed it was in a very good position "... to proceed in terms of hiring personnel in this particular category [APS staff] and deploying their work efforts without the assistance of this particular CWA effort" (20T63).

At this time, Webb recalls attending a meeting assembled by the provost for the purpose of informing management employees what they could and could not do during the CWA campaign (20T64-20T65).^{39/} Present at the meeting in Camden were one or two outside consultants who instructed the attendees generally on what they could and could not do relative to the union organizing

^{39/} Webb may have been invited to a meeting in New Brunswick but she does not recall attending (20T64).

effort (20T65).

In 1995 Webb was aware that Maureen D'Arcy, director of housing for the Camden campus, was in fact involved in the CWA effort (20T66). When the 1997 management audit led by Webb's successor on the Camden campus Mark Rozewski and Acting Provost Roger Dennis was being conducted in Camden, Webb never discussed D'Arcy's 1995 union activities with them (20T140).

Additionally, although she was aware in 1995 of the CWA organizing effort and election, she was not aware of any role that Randolph played in that effort (20T10-20T11). Prior to her arrival in New Brunswick in September 1996, Webb knew Randolph only superficially. She met Randolph when he visited the Camden campus as part of the admissions process and may have seen him a couple of times when she visited the New Brunswick campus (20T10).

The parties dispute whether, during the CWA 1995 campaign, election and second organizing campaign, Webb saw any Administrative Organizers (the CWA campaign newsletter), the mailing sent out with Randolph's picture and quote or the RAPSS flier announcing the continuing CWA effort post-election (CP-6 through CP-12, CP-14, 20T11-20T12, 20T66). Randolph says yes, Webb says no. Randolph believes Webb received these mailings because he says he saw her name on the list of people to receive literature put out by the CWA organizing effort (9T32-9T33, 9T62, 9T65-9T67). I credit Webb's denial.

On redirect examination Randolph misidentified CP-33, a list of the advisory group put together by the University in 1997, as the mailing list he saw in 1995 which contained Webb's name together with the names of other individuals who were to receive the union's literature (9T110-9T111). On recross, when asked how in 1995 he could have been shown a list (CP-33) which was only created in

1997, Randolph responded that CP-33 was not the actual list he saw but "I saw a list like this" (9T112). Randolph then added that although he saw Webb's name on the mailing list in 1995, he did not recall what her title on that list was because "[Y]ou're talking four years ago. I don't remember" (9T113). Randolph's uncertainty make his version of the fact less reliable.

It is more likely that Randolph cannot recall Webb's title on the 1995 list because the mailing list would have been voluminous (approximately 2,000 employees were being organized). Moreover, Randolph would have had no particular reason to remember Webb's name let alone her title on a list he saw in 1995 because at the time that Randolph was actively involved in the CWA campaign through the spring and summer of 1995 and up to the election in November/December of 1995, Webb was working on the Camden campus (9T61-9T62, 9T64). It was only in September 1996 when Webb went to New Brunswick to head undergraduate admissions that Randolph would have any reason to take special note of her name on a mailing list.

As to any other specific knowledge that Webb may have had of Randolph's union activities in 1995, Randolph did not remember Webb's ever being in attendance at any of his luncheon talks in support of the CWA effort or other conversations that he had with staff about unionization (9T62). Randolph did not subsequently discuss his involvement in the 1995 union organizing effort with Webb once she took over her new position in New Brunswick. Randolph did not speak to Webb during the eight or nine months that she was head of the office of undergraduate admissions until the day that she delivered his layoff notice in May 1997 (9T33.). According to Randolph, the first time that Webb was in his office was on May 23 1997, when he was told that his position was being eliminated and he was told to leave his office (9T33). In any event, Webb never discussed Randolph's union activity with

anyone (20T13).

Webb did not recall any particular concerns that the University had in the aftermath of the 1995 CWA campaign nor did she recall being invited to any meetings to discuss issues related to APS employees. In February 1996 Webb, together with seven others, was invited by Richard Norman to attend a meeting to discuss ways to improve relations with APS staff by identifying issues of concern (CP-45). Although her name appeared on a January 7, 1997 list of approximately 70 employees in the advisory group, she never attended any meetings of the group (CP-33, 20T130-20T131).

130. Before assuming her position in the office of undergraduate admissions, Webb reviewed consultant reports, spoke to provosts, various deans and other University-wide directors. She did not consult her predecessor Elizabeth Mitchell, the directors of admissions in Newark or Camden, or Hodos (20T71, 20T77-20T78).

Webb identified a significant number of problems and weaknesses in the undergraduate admissions office, including the following: complaints from prospective students and parents about the quality of service when calling for information; the scheduling of campus tours and the length of time between application and decision; the lack of an overall recruitment plan; no system for the accountability of fund disbursement; poor organization of duties and responsibilities among staff; and poor coordination between deans on the various campuses regarding the review of student applicants and their documentation (20T70). These problems needed her immediate attention (20T70).

Minority recruitment required particular attention in the admissions office prior to Webb's arrival. In 1994, minority recruitment became a concern due to University President Francis Lawrence's controversial statements about minorities and testing (R-58, 9T43, 9T46, 9T101-9T102,

9T107-9T108, 20T83-20T84). Specifically, Webb, who was associate provost in Camden when the remarks were made, met with minority students and others who were concerned about the comments (20T84).

After Lawrence's statement, the recruiting task became more difficult for a time. For instance, it became difficult to recruit candidates for the James Dixon Carr Scholarship Fund a financial merit award given by the University to recruit Afro-American and Puerto Rican students (9T109, 20T128-20T129, 20T136-20T137). The admissions office was pressured to do more minority recruiting (9T46-9T47, 9T109-9T110). As a result, key guidance counselors were contacted and students being recruited were spoken to individually (9T47, 9T75). By the 1996/1997 academic year, however, Randolph was doing less minority recruitment than the previous year (9T47).

When Webb arrived in New Brunswick to assume her new responsibilities in undergraduate admissions, she felt that minority recruitment and concerns about Lawrence's November 1994 comments were no longer an issue on the Rutgers campus (20T86). At least it was not a problem or weakness she identified as requiring her immediate attention. She based her conclusion on a review she conducted when she first came to New Brunswick of the strengths and weaknesses of the minority recruitment program (20T89).^{40/} Webb found the professional staff on all three campuses, not just those assigned to do minority recruitment, had scheduled a series of visits with potential high yield schools and maintained contact with the guidance counselors. It was not a localized effort in the New Brunswick admissions office (20T90).

^{40/} Waldman also felt that minority recruitment was important but did not take on any heightened importance after President Lawrence's 1994 comments (11T55).

Her conclusion that minority recruitment concerns in the wake of Lawrence's 1994 comments were no longer an issue in 1997 requiring her immediate attention is supported by the subsequent statistical increase in minority scholarship recipients between 1997 and 2000. For instance in the academic year 1997/1998, there were approximately 100 James Dixon Carr scholarship recipients. This number increased to 163 in the fall of 2000 (20T136). Additionally, the University doubled the amount of money committed to the program since 1997 from \$20,000 to \$40,000 and lifted the cap on the number of individuals awarded these scholarships (20T137, 20T149).

The Restructuring of the Office of Undergraduate Admissions

132. Webb restructured the office of undergraduate admissions to meet her charged responsibilities and specific goals as follows :

When I was appointed as associate vice-president for enrollment management, I was charged with the responsibility of taking a look at the entire office of the university undergraduate admissions and to determine whether or not the office was in fact strategically ready to move the university forward in advancing its position as a competitive university of choice and to compete aggressively in the marketplace.

The marketplace had indeed become very, very competitive over the past six years, and my direct boss, Dr. Nancy Winterbauer, who reports to the president, she's the vice-president for university budgeting, was particularly concerned as to whether or not we were ready to take on the challenge of this very, very competitive market and if not, what needed to be done.

I analyzed the office for six months and I then began to formulate a plan to restructure the office. Some things became very clear to me in terms of where we needed to strengthen our position. We needed to become aggressive not only in our market research so that we knew why we were going to certain areas to recruit prospective students, but we also had to change our communications program, our customer service operation, we had to strengthen the skill set of our support staff and

also to strengthen the computer skill set of our professional staff.

There were peaks of operation during any admissions cycle wherein we did not have the resources to manage those peak periods and at the same time we had to develop a positive admit program wherein we could focus on enrolling the students that we had in fact admitted.

Up until the point in which the president created the title of enrollment management, there was a very direct focus on admission, but to admit a student does not mean that you have enrolled that student at your university. And what we had to do is put an entire program into place to move students through the entire prospect system, beginning with market analysis, getting the students to apply, admitting the students and then getting them to enroll.

And that indeed is in any measured environment, that can take two years at the minimum to do that for any one particular cycle.

So as I proceeded the first six months, I had a plan that I then started to formulate, I advanced a restructuring plan to my boss, and that was discussed and certainly I then proceeded to put it into place. [20T13-20T15]^{41/}

133. In March 1997, Webb submitted a nine-page reorganization plan to Dr. Winterbauer and met several times with her to discuss it (R-127, 20T24, 20T28-20T29). At no time during those discussions and/or meetings did the subject of Randolph's union activities come up (20T29). Webb subsequently submitted a summary description of the reorganization plan to Winterbauer (R-128, 20T29). In late April or May she submitted a final summary of the reorganization plan together with an attachment listing individuals who worked in the office of undergraduate admissions on all three

41/ Associate Director for Personnel Services David Waldman was involved generally in the reorganization of the Admissions Department. He also testified that the goal of the reorganization was to end inefficiency, improve processes, reduce the duplication of effort and provide better customer service to potential applicants and their families (11T51).

campuses that would be affected by the restructuring plan (R-129, 20T30). Webb's restructuring plan addressed concerns identified by her six-month study of undergraduate admissions and resulted in changes to meet organizational objectives within the context of existing resources (R-128).

The plan envisioned redeployment of savings from the salary side to the non-salary side of the budget. For instance, the undergraduate admissions office was able to move monies from the salary budget to the non-salary budget and purchase an enrollment planning services program from the College Board for a yearly fee of \$5,000. The program generates an annual report analyzing students who took the scholastic aptitude test and profiling U.S. high schools including students' interests, grade-point averages and socio-economic backgrounds. This information is used to target high schools and students for purposes of recruitment, admissions and enrollment. It is a geomarketing planning tool (R-127, R-128, R-129 20T16-20T18, 20T38).

Additionally, in the area of communications and customer service which Webb identified as a weakness, she began a pilot program in October 1996 in the New Brunswick campus information services (CIS) department. Telephone calls which had previously been answered by undergraduate admissions staff were shifted directly to CIS and answered by part-time students trained to do so. Webb felt the students would provide better service to other students and parents calling for information (20T19-20T20).

After the pilot program ended successfully, Webb shifted the entire telephone answering operation from Undergraduate Admissions to CIS which required shifting approximately \$100,000 of undergraduate admissions' resources to enable CIS to hire additional staff and expand the service to evening and weekend hours. It relieved Webb's office of having to answer phones but required a

reduction in force in her office in order to realize the \$100,000 cost (R-127, R-128, R-129, 20T20, 20T37).

As to strengthening her support staff's skills and addressing inefficiencies in their overlapping responsibilities and duties, Webb worked with the department of human resources to create a new support staff position, principal clerk (R-127, R-128, R-129, 20T21-20T22) . She felt that the support staff did not have a well-rounded set of multitasking skills. Webb observed that the staff worked in segregated areas but did not possess the skills or ability to move through the entire process "from the time when the telephone call comes in to the point in which the student is actually enrolled and we are calling students to see whether or not they have any problems with their financial aid or their bill payment . . ." (20T21-20T22). The new position was designed to address this concern and enable staff reduction (R-128).

As to strengthening the skills of the professional staff, Webb wanted to maximize computer use so that they could manage their own correspondence and schedules. She wanted to give them the computer resources and training to do that. Webb calculated that with professional staff increasing computer usage, she would not need as many secretaries and could redeploy personnel in the new multitasking principal clerk position (R-127, R-128, R-129, 20T22).

Beside the \$100,000 set aside for the CIS transfer, Webb realized an additional salary savings of \$44,000 from the reorganization which she redeployed to hire part-time personnel during peak periods in the enrollment cycle and to buy computer software (R-127, 20T22-20T23, 20T38).

Finally, in the area of professional staff, the restructuring plan achieved an equitable balance between support and professional staff, specifically distributing line and salary resources 35 percent to

support staff and 65 percent to professional staff. Additional professional staff were allocated to the Newark and New Brunswick campuses to support recruitment efforts during pre- and post-admissions cycles (R-128, R-129).

Webb met earlier in the year with Dean Hosford, Associate Provost Smith and Admissions Director John Scott, all from the Newark campus, to discuss staffing. In particular, they requested the creation of a senior level admissions officer position for the purpose of recruiting transfer and graduate students. Additionally, Hosford and Smith separately urged the hiring of a new director of admissions in Newark because the incumbent (John Scott) did not appear to enjoy the trust and confidence of the campus' faculty and administration and recommended that he be offered a voluntary downgrade to senior admissions officer I (range 25) and transferred to the New Brunswick campus. In response to these requests Webb's restructuring plan called for hiring a new admissions director and adding one new position of admissions officer II on the Newark campus (R-127).

Her plan also called for reducing senior managerial personnel while adding more entry level admissions officers on the New Brunswick campus. (R-127). As a result, Webb's plan eliminated two senior admissions positions: the senior associate director position (Hodos' position at range 32) and one senior admissions officer II position at range 27. Hodos was a 29-year employee and, unlike Randolph, was not eligible to vote in the CWA elections (9T69, 20T70). She replaced these positions with an entry level admissions officer position at range 21 and a senior admissions officer I position at range 25. John Scott, who as admissions director in Newark was at range 30, was offered the downgrade to senior admissions officer I with new responsibilities to increase the recruitment of transfer students, University college students and graduate students. Scott was permitted to retain his range 30

salary for two years before the downgrade took effect (R-127, R-128, 20T35).^{42/}

In Webb's final summary description of the restructuring plan she detailed the impact from these personnel actions:

Non-Salary Resources: The personnel actions . . . will result in the elimination of 19 positions (17 support and 2 administrative) and the creation of 14 positions (11 support and 3 administrative) resulting in a net reduction of 5 positions. Approximately \$130,000 in salary savings will be realized from these planned personnel actions. These savings will be re-invested in UUA [university undergraduate admissions] to provide sufficient non-salary resources to fund the Campus Information Services partnership, support additional on-campus recruitment programs, secure new computer hardware, software and training for staff and enhance communication and yield programs to enroll admitted students. [R-129]

134. In the original nine-page plan submitted to Winterbauer (R-127), APS and support staff were to be notified of the personnel actions on April 11 or 18, 1997, respectively (20T31). The notification date was then pushed back to May 23, 1997, to ensure Webb's office would be adequately staffed to get through the critical period of processing first year student reply notices for the May 1st national reply date (20T31-20T32).

In April 1997, during performance evaluations, Webb discussed the restructuring plan generally

^{42/} Webb's testimony is inconsistent regarding Scott's salary and transfer to the senior admissions officer I position. On direct she testified he would maintain his higher salary (range 30) for two years and then it would be lowered commensurate with his downgraded range (range 25) (20T35). On cross examination, however, she testified that his salary was never actually lowered (20T121). I concluded that at least at the time of the restructuring plan it was her intent to lower his salary, after a period of time, to range 25.

with Scott and Hodos, although she did not discuss the details (20T32).^{43/} In particular she had heard that Hodos was considering, although had not yet made a decision about, retiring from the University (20T32-20T33). During her performance evaluation meeting with Hodos, he asked Webb whether she was going to keep him on. Webb told him that she was not going to keep him on but that if he was thinking about retiring, he should let her know. If he decided to retire, it would not be necessary to send him a layoff notification (20T33). Hodos got back to Webb within a couple of days and informed her that he would not be retiring (20T33).

As to Webb's meeting with John Scott, she explained to him that she needed to appoint a new director of admissions for the Newark campus and that she planned to conduct a national search for the new hire. Webb informed Scott that she wanted him to consider a transfer to New Brunswick to head up a new program concentrating on a strategic recruitment of transfer students. Scott responded that "[He] would be happy to do that" (20T33).

Hodos and Scott were the only two people in her office that she spoke to about her restructuring plans (20T34).

Randolph and Barbara Wright

135. Having made the decision to restructure the office and reduce the number of senior managers, Webb had a choice to make (20T51). She describes the choice that she had and why she made it as follows:

^{43/} It is unclear from the record what Webb considered to be the details of the plan. However, I need not resolve the specifics of her conversation with Scott and Hodos. It is apparent she did discuss the actions she intended to take regarding them.

The office was organized in terms of teams. Each one of those teams had an associate director, and in New Brunswick those four associate directors reported not only to me but also in a secondary fashion to Mr. Hodos as the senior associate director. Each one of those associate directors were at the time range 30 and they each, with the exception of one team, they each had a second in command at a range 27.

That appeared to be reasonable to me, with the exception of one team which had two range 27's. I focused in on the range 27 for equity across the unit in terms of management support, and I selected those two range 27s who were reporting to the associate director for recruitment, Nancy Pullen I would keep one of those range 27 positions.

So too, I did not think that the senior associate range 32 was necessary any longer. I needed fewer senior managers and more entry level professionals that could in fact recruit students for the university.
[20T51-20T52]

The two range 27 recruiters reporting to Pullen were Randolph and Barbara Wright (20T52).

In 1997 Randolph was a senior admissions officer II, a title he held for eight-and-one-half-years (CP-55). According to his 1997 appraisal, his key duties were as immediate back-up to the Associate Director Nancy Pullen, coordinating recruitment activities in Ocean County and Pennsylvania and conducting information sessions, handling paperwork for pre-screened athletes and reviewing applications and rendering decisions accurately within the required time frame (CP-55). In the 1996/1997 academic year, Randolph spent 70 percent of his time on recruitment activities half of which time was spent on minority recruitment activities (9T36-9T37, 9T73, 9T96, 20T53-20T54). The other half of his recruiting time was spent in Pennsylvania (9T73).

In 1997 Wright's title was coordinator of multi-cultural recruitment, a title she held for six years (R-151). The key duties of her title included leading a team which developed and coordinated

strategies to recruit, admit and enroll students of color, focusing on African-American and Latino students, coordinating recruitment in New York City and Washington D.C. and reading a fair share of applications while rendering decisions accurately and within the required time frame (R-151).

Webb decided to retain Barbara Wright (20T54). She reasoned that:

. . . Barbara Wright had the skill set and the recruitment strength and the professional experience to help move the unit further along. It was a judgment call on my part. I had to weigh my observance of their performance in the time that I had been there, and I concluded that Barbara was in fact the stronger of the two and would help us with the objectives that we had articulated. [20T54]

Webb felt that Wright had the stronger skill set in moving students from admission to enrollment and possessed the requisite skills for a manager which Webb defined as overseeing staff and knowing policies and procedures and how to implement them (20T127-20T128).

In Wright's 1997 performance appraisal, her supervisor, Nancy Pullen, wrote:

Barbara is a valued member of the Recruitment Team. She is a strong leader of her minority recruitment team and has worked hard to keep them focused. In addition to hosting Carr families on campus, attending national college fairs, planning and hosting receptions, Barbara and her team were responsible for dramatically increasing the number of CAP programs last cycle. She will continue her pursuit of community and church organizations this spring. She worked the NJ county coordinators to establish plans for key DFG schools. She put together a calendar of all the minority recruitment programs and activities at RU - no easy task.

And all the while, Barbara recruits tirelessly in the Bronx, Brooklyn, and Washington, DC. We continue to enjoy a good relationship with Project Excellence in Washington, DC. The earlier deadlines for reading applications brought Barbara into the office earlier than previous years, but she will attempt to visit more high schools this spring.

Barbara met many of the goals she set for herself last cycle. She communicates with me on a regular basis. She continues to work hard to keep the Carr Society as allies in the recruitment of prospective students. Her team is building a strong relationship with the Latino Community with Hector's assistance. She is becoming more comfortable in using the computer.

Everything Barbara does, she does well - and with real team spirit. With limited resources, Barbara continues to work with the same level of enthusiasm and energy we have come to enjoy. [R-151]

Webb commented in the 1997 appraisal:

Barbara is a key member of the recruitment team! She has dedicated endless hours and devoted service towards satisfying university goals and objectives. She will continue to play a pivotal role in advancing our objectives. Keep up the great job! [R-151]

Wright had received similar praise in prior years from Pullen and Dr. Elizabeth Mitchell,

Webb's predecessor. For instance, in Wright's 1996 performance appraisal Mitchell wrote:

The quality of Barbara's work, her energy, commitment, and enthusiasm ought to be emulated by other staff - she's terrific. I especially appreciate her efforts to "open" her area to contributions from colleagues not on her immediate team and I always am grateful for the candid conversations with me. [R-152]

Additionally, in Wright's 1995 appraisal Pullen commented that "... [Wright's] optimism, enthusiasm, and energy are a tonic, and her merit award this year is only a token of her value to us" (R-153). Mitchell added: "... I have no doubt she will have another "knock 'em dead" Year!" (R-153). Wright's performance appraisals in 1993 and 1994 were similarly positive and encouraging (R-154, R-155).

136. By contrast between 1993 and 1996, prior to Webb's arrival, Randolph's performance

appraisals contained both praise and criticism and were encouraging of his work while noting areas for improvement (R-59 through R-62).

For instance, in his 1993 evaluation, after describing Randolph as “terrific at recruiting applicants” and “a valuable member of the minority recruitment team,” Pullen stated:

Scott needs to direct more of an effort toward other responsibilities in his job description, such as serving as my back-up. Together we need to do a better job of communicating and have scheduled to meet regularly to share information. He also needs to make an effort to work on his unmet goals, such as developing a comprehensive plan to recruit transfer students and Governor’s School participants. [R-62]

Mitchell concluded the evaluation with the following:

Scott is a very capable Admissions Officer. I hope he will tackle this year’s projects with all the energy and intelligence he is capable of focusing on them-if he does, the outcomes will be terrific. [R-62]

In his 1994 evaluation, after noting a change in his responsibilities, Pullen commented:

The greatest challenge to Scott now is to truly serve as Assistant Director of the recruitment team. To accomplish this, two things need to occur. First, he needs to communicate with me on a regular basis to share information and ideas. Second, at this point in his career, Scott needs to achieve and maintain the demeanor of an Assistant Director so colleagues will respect him in that role. To achieve this, he needs to be mindful of his behavior and personal style. For example, he should be tactful in all of his interactions with fellow staff members; he should keep his paperwork, especially that elated to athlete pre-screens, orderly and accessible so colleagues can respond to inquiries in his absence; and he should spend his office time in such a way that colleagues will know he is working and “on top of” his responsibilities. Scott has made an effort to achieve these goals, but must continue to earn the confidence of his colleagues to be perceived as one worthy of advancement. [R-61]

Mitchell then explained:

I very much want Scott to meet his goals. It's important to all of us, including Scott himself, that he actively and fully, assume the senior-level responsibilities he is capable of. I want him to receive the respect, enjoy the valuations so many staff want to give him-but he needs to contribute, through job performance to their high regard. [R-61]

In 1995 Pullen commented:

[T]he 1994-1995 year was the second year of Scott's revised job description and we saw significant achievement in several of his areas of responsibility. Overall, we noticed a calmer, more organized Scott. He communicated with me more regularly [R-60]

Mitchell added:

Scott's temper gets frayed at times-like mine! . . . this past year seemed a good one for Scott I don't think Scott has yet reached his potential in recruitment planning-this new year may see that. Scott's recruitment zeal has us all in his debt. [R-60]

In Randolph's 1996 evaluation, Pullen complimented him as "an invaluable member of the recruitment team" and "a valued member of the minority recruitment team" (R-59). She then stated:

Scott has met most of the goals we discussed last year. Scott and I communicated regularly, sharing ideas and planning recruitment strategies. With a small group of staff, he designed a terrific plan of out-of-state activities, as well as a time/cost analysis. He assisted with the analysis of data related to recruitment, and did much to increase applications to the University. More work needs to be done in exploring new ideas to recruit transfer students Congratulations, Scott, on your merit award this year. You deserve it! [R-59]

Mitchell concluded his 1996 evaluation:

Scott is slowly but surely shedding his curmudgeon role, and we're all

better for his more often expressed positive attitudes about admissions. Scott's dedication, hard work, and intelligence are exceedingly important to us, and we count on Scott's doing his best-which is the best! Bravo! [R-59]

Based on a review of Randolph's 1993 through 1996 performance appraisals, I find that his goals were sometimes met, particularly in regard to minority recruitment, but his organizational skills, communication with Pullen and attitude toward staff consistently came under criticism. In the 1995/1996 academic year he achieved most goals and was recognized and rewarded for his good work. Additionally, in 1996 he received a merit award on the recommendation of his previous director, Elizabeth Mitchell (9T105-9T106).

137. Nevertheless, in determining whether to layoff Wright or Randolph, Webb only relied on her personal assessment of the two individuals and their performances, not on evaluations by prior supervisors (20T96).

Randolph's Work Performance in 1996/1997

138. In 1997, Webb rated Randolph's performance unsatisfactory (CP-55). She based her assessment on personal observations and difficulties experienced by Randolph's immediate supervisors. Unlike the 1995/1996 work year, Randolph experienced significant difficulties in 1996/1997, particularly with respect to criticism of his performance and work attitude by his immediate supervisors, Nancy Pullen and Doris Holohan.

In January 1997, Randolph received a memorandum from Pullen concerning an October cash advance of \$322 for which he failed to provide the requisite paperwork (R-56). Admissions officers receive cash advances to pay for expenses when they are on the road but University policy required an

accounting within ten days of the recruiter's return to the office (9T88-9T89). Pullen's memorandum set a January 28 deadline for Randolph's paperwork submission and cautioned that failure to do so would result in disciplinary action (R-56).

Randolph explained he was not able to furnish the paperwork because his car had been stolen and the cost verification records were inside the car (9T106-9T107). Randolph paid the \$322 (R-56, 20T56-20T57).

139. In March 1997, Randolph received a memorandum from Doris Holohan. In that memorandum she criticized his continuing inability to follow guidelines for certain admissions which had been reviewed with him at a February 27, 1997 meeting. She also criticized his failure to meet a February 28 notification deadline for nursing candidate final application decisions, a deadline Randolph assured her he would meet (R-54, 20T57).

The Holohan memorandum concluded:

Given this unsatisfactory performance, this memorandum serves as an official letter or warning that corrective action must be taken.

As a seasoned admissions professional, you are expected to:

1. understand and follow admissions guidelines and consult with appropriate admissions, faculty or deans office representatives as necessary before acting outside of the guidelines;
2. complete assignments as requested or discuss with your supervisor, in a timely fashion, any difficulties you are having in completing those assignments; and
3. Show initiative in solving problems as they are brought to your attention.

Failure to execute duties as expected will lead to further disciplinary

action. [R-54]

This memorandum was copied to Corinne Webb, John Scott (director of admissions for the Newark campus) and Pullen.

In a written response to the Holohan warning, Randolph denied receiving the admissions procedures or making any admission decisions after the February meeting. As to his failure to meet Holohan's February 28 deadline Randolph explained that he made immediate calls to the Nursing Deans but he had no authority to demand that the deans stop their activities to comply with the admissions deadlines.

Finally, in Randolph's response he described his work year:

. . . As you well know, this has been an extremely hard year on everyone. Perhaps I tried too hard to get my job done in a timely fashion. To take on athletes, Newark Committee Review, two rotaries, recruiting, one-on-ones, Nursing admission decisions, van Nest information sessions, led to far too many 12 hour days. But what was I to do? All I ever heard was hurry and get the job done. Now, to be criticized so severely, given the circumstances and conditions under which I worked, seems highly unfair. It should be noted that I reviewed over 2,500 cases in a period of less than three months and that does not include close to 500 pre-screen athletes. [R-55]

140. In April 1997, less than two weeks after the Holohan disciplinary action, Randolph received the unsatisfactory 1997 annual performance review (CP-55, 9T14-9T15, 9T56).

Nancy Pullen had been his supervisor for the previous eight years (9T57). Pullen prepared the appraisal.

Under the section entitled Assessment, Pullen wrote:

Scott is a recruiter through and through. Last cycle, he represented Rutgers at over 100 events off campus, more than double the amount

of other recruiters! His information session talk is one of the best I have observed. Scott is a valued member of the minority recruitment team, helpful in planning activities and attending events related to the recruitment of students of color.

When the big push came to review applications, Scott reviewed more than his share of applications. The data indicates that he made nearly 2500 decisions on applications between early December and January 15, which is on par with the ARN team members. Scott also volunteered to be the point person in this office for NCAS and College of Nursing applications. Reviewing so many applications in so short a time frame affected the accuracy of his review in some cases, for example, using the wrong parameters for UC-option admits in Newark. Also, being so involved with the ARN team left little time for Scott to assist me with the planning of recruitment activities.

Scott handled the paperwork for approximately 500 pre-screened athletes, in a timely, accurate manner. He was reminded not to let his personal feelings about students' qualifications come through to the over-sight committee.

As the picture of recruitment changes, I will need Scott to help me design new strategies and embrace change with an upbeat attitude and style. Scott's effectiveness as a member of the recruitment team is at times compromised by his frustration at having to adapt to changes he doesn't necessarily support. It is increasingly clear that change is with us, and if he is to be effective, he will need to keep his feelings to himself, get beyond those feelings to constructive planning; be part of the solution to issues and challenges as they arise; pay more attention to detail; and follow through on assignments. Both Doris and I have had discussions with Scott about his attitude. I hope that he understands how his behavior affects others on the recruitment team and in the office in general, and the necessity for change in that behavior. I look forward to helping Scott in his efforts to adapt the consistent upbeat attitude and style of a senior admissions counselor. [CP-55]

The 1997 appraisal was signed first by Pullen on April 2, 1997 without additional comment, then by Randolph on April 11, 1997 without comment.

On April 18, 1997 Webb added her signature to Randolph's performance review and in the comments section wrote:

Scott's performance does not satisfy the standards for this office. [CP-55, 20T132-20T133]

Randolph was not pleased with his evaluation but signed it without comment. He sent a separate memorandum dated April 11, 1997 to Nancy Pullen and Doris Holohan responding to the criticisms contained in the performance review (CP-56, 9T14).

He attributed his attitude problem to a two-and-one-half-month delay, from September to November 1996, in obtaining reimbursement for recruitment expenses which he described as an extreme financial hardship on him and his family. He expressed his frustration over the situation to Pullen and others (CP-56, 9T16, 9T25-9T26, 9T114-9T115, 21T101).

In addition to the written memorandum, Randolph more fully describes his attitude on the reimbursement issue and how he communicated his frustration at work:

I went to my immediate supervisor . I started out saying look, this is getting ridiculous. I spent a thousand dollars of my own money. I'm not getting any money back. I asked her to intercede on my behalf. She comes back and says she can't do anything about it. And this went on for over two months. And when it got to the point where I had spent close to two thousand dollars of my own money, I blew my top and said either tell me to stop recruiting or get me the money. I can't afford to operate like this. [9T15-9T16]

Randolph felt that no one else in the office was treated this way (9T16). However, on cross examination Randolph admitted that although he had submitted paperwork immediately to be reimbursed, the paperwork was not submitted "to the office upstairs" because Nancy Pullen made

changes in procedures. These changes delayed reimbursement generally and affected other admissions officers as well as Randolph (9T58-9T59). I do not find that Randolph was being singled out on the reimbursement issue or being treated differently. Nevertheless, I find that Randolph believed he was being treated unfairly, was upset and expressed his concern, at times inappropriately to his supervisors and others (“I blew my top.” (9T16)), which concern impacted his attitude at work.

Next, he stated that he had no problem with change but did have a problem with being treated as less than a professional (CP-56). He shared the blame for inaccuracies in the “UC-option admits” in Newark but explained that he was not provided with the necessary procedures to rule on the applicants.

With regard to the criticism that he had not finished the review of nursing applicants in a timely fashion, Randolph explained that he was dependent on the schedules of the two deans from the nursing program who were not able to meet with him as quickly as he would have liked (CP-56, 9T17).

Finally, Randolph agreed with the positive aspects of his 1997 evaluation, namely that he read the second most applications and represented Rutgers at more than double the number of off-campus events (9T24).

141. In addition to the criticisms noted in the performance evaluation, Webb observed that Randolph was at times “very loud, opinionated and difficult” (20T56). In support of this conclusion, Webb noted the problems Randolph had with his supervisor, Pullen, over submitting documentation on a cash advance and vouchers in a timely fashion. In particular she remembered that Randolph went to the accounting department after receiving the memorandum from Pullen “to get certification that he did not have to return or submit his vouchers” Webb “was very surprised that Mr. Randolph would

behave that way in taking umbrage with the necessity of showing documentation in a timely fashion for cash reimbursement” (20T57). Webb did not speak directly to Randolph about his attitude, but Pullen had discussed it with him at his performance review (21T99, 21T101).

Webb also observed the incident in which Holohan “. . . had the unpleasant occasion to bring to Mr. Randolph’s attention some errors that he had made in making decisions where students should have been denied, he admitted them . . .” and not following guidelines for reviewing students applications to the school of nursing in Newark (20T57).

In deciding between Wright and Randolph, Webb weighed these incidents together with the “awkward moment that I personally experienced with Dr. Winterbauer, it represented to me a discourteousness and in my mind he [Randolph] is on the front line, he is supposed to represent the University when he is out recruiting, and that translated to me that perhaps that was not the skill set or the professional demeanor that we needed in order to advance our goals” (20T57-20T58).

The parties dispute the “awkward moment” which occurred in December 1996. Dr. Winterbauer visited the undergraduate admissions office to personally thank the staff for its efforts in successfully introducing a new priority notification admissions campaign (20T25-20T26, 20T123). Webb had previously alerted Winterbauer to the staff’s diligent efforts. Webb escorted her personally through the office introducing her to members of the staff (20T26).

When they came to the door to Randolph’s office, Webb described the following encounter:

Standing alongside of Dr. Winterbauer I observed—well, I introduced Mr. Randolph. He was sitting in his office and he was leaning up against a chair, I believe, reading an application.

Dr. Winterbauer and I came to the threshold of his office, the doorway,

and I said, "Scott, I would like to introduce you to Dr. Winterbauer," and he looked up and he just looked at the two of us, and then after a pause said, "Oh."

It was very embarrassing for me, having my boss present during that moment, but it was discourteous at the very least that he didn't stand and extend his hand. Everybody else in the office was so moved that she took time to come over and personally thank them and it was very appreciated, and it was a very different response from Mr. Randolph, awkward. It was an awkward moment. [20T28].

On cross examination, Randolph testified that he recalled Webb escorting Winterbauer through the office, introducing her to the staff, and passing by his office but does not recall whether Webb specifically introduced him or not (9T95). He denied that he did not stand up if he was introduced because "[M]y mother taught me to be courteous" (9T95).

Subsequently, during rebuttal testimony -- ten months after his cross examination and after he reviewed Webb's testimony(21T102) -- Randolph testified that on the day that Winterbauer came to the office, he heard Webb introduce Winterbauer to Barbara Wright who occupied the office next to his. He assumed Webb would then come to his office and introduce Winterbauer, but Webb and Winterbauer walked right past his office. Randolph thought this was "a big slam" (21T91). Randolph went to Wright and said "I guess I don't rate an introduction" (21T92).

I credit Webb's recollection of this incident. Her description is more plausible than Randolph's. It makes sense that Webb would have taken Winterbauer to meet each employee. Randolph's inconsistent testimony on this incident is not reliable. It was during this period according to Randolph's own testimony that his attitude toward work was colored by his anger over the reimbursement of his out-of-pocket expenses and his perception that he was unfairly singled out on this

issue. It is conceivable that his anger would spill over to Webb and Winterbauer who represented the administration.

Whether the incident occurred exactly as Webb described is less important than Webb's perception that Randolph caused her embarrassment in front of her boss. Winterbauer's visit was clearly important to Webb who had instigated it by alerting Winterbauer of her staff's diligent efforts. She was invested in its success. Webb was more likely to remember Randolph's "embarrassing" behavior than Randolph who did not have a direct reporting relationship with Winterbauer or an investment in the success of the visit (20T34).

142. In addition to the above-noted incidents, Webb, in making her layoff decision, considered Randolph's personal appearance. She found that Randolph who was "an ambassador of the University" and in the public eye was not always dressed well in the office or when he was outside the office (20T58). Although Webb never spoke to Randolph about his dress or "wrote him up," his supervisor discussed the topic with him (20T123).

Webb also observed that Randolph's office was "... [v]ery unkept, sloppy, food wrappers, plates, napkins were left on his desk overnight." (20T58, 20T125). Webb did not recall seeing any CWA literature in his office (20T125). However, the condition of his office did not necessarily factor into her decision and she never notified him that it concerned her (20T58, 20T124).

143. Finally, in determining whether to layoff Wright or Randolph, Webb reviewed various University policies in regard to layoffs including the policy set forth by Richard Norman's memorandum sent out at the time of the 1994 University layoffs (CP-34, 20T99, 20T142).

This memorandum instructed that when vice-presidents and provosts are choosing between

regular employees who perform similar functions, they should base their decisions on length of service, quality of service as documented in annual performance appraisals and elsewhere, capacity of the individuals to perform a wide range of activities and the University's affirmative action policies (CP-34).

Webb considered length of service (Randolph had approximately 30 years of service while Wright had less than ten years) as a factor. More importantly, she considered the quality of performance (20T100). Webb did not consider performance evaluations prior to her tenure because she might have come to different conclusions than prior supervisors based on her own expectations and observations of performance (20T101, 20T108).

The Layoff in Undergraduate Admissions

144. Of the approximately 72 employees in undergraduate admissions, approximately 19 were affected by the reorganization (20T16). Although 19 positions were eliminated, 14 new positions were created resulting in a net reduction of five positions (R-129).

Seventeen support staff positions were eliminated, including 11 on the New Brunswick campus (two were by attrition), two from the Camden campus and four from the Newark campus (R-129). The laid off employees were replaced by 11 new principal clerk positions with six assigned to New Brunswick, two to Camden and three to Newark (R-129). The secretaries were represented by AFSCME, Local 1761, known as COLT employees.

The two professional staff positions that were eliminated came from the New Brunswick campus, specifically Hodos and Randolph (R-129). Three new professional staff positions were created. An admissions officer I position was created in the New Brunswick office; an admissions officer II position was added in the Newark office and a new director of admissions was hired for

Newark (R-129).

145. Generally, in preparation for the layoffs, Webb reviewed University policies on layoffs and consulted University Regulations on employment protection and job security for APS staff and regulation 1.92(B)4 concerning downgrade salary adjustment for APS staff who are given notice of layoff but who may be successful candidates for lower rated positions (20T142). Webb also reviewed and applied the layoff summaries and the status of benefits in the event of layoff provisions contained in various union contracts and policies (R-156, R-157, 20T142-20T144).

Additionally, in anticipation of the May 23, 1997 personnel actions, Webb arranged for a plain clothes police officer to be present in the office (20T49-20T50). She wanted to be certain that if anything became disruptive he would assist her in managing the situation (20T49). From first thing in the morning until about 1 p.m. the officer sat in the office next to Webb's and on the other side of the admissions office from Randolph's office (20T49-20T50). As far as Webb knew, the officer never spoke to the laid off employees although she was out of the office for approximately 25 minutes for a meeting at the Busch center with the laid off support staff (20T50, 20T126).

146. On May 23, 1997, Webb delivered letters to the New Brunswick support staff informing them that due to budgetary and operational considerations their positions as principal secretary-range 13 was being eliminated effective June 30, 1997 (R-130 through R-144, 20T39-20T40). On the other two campuses, Director of Admissions Dr. Deborah Bowles (Camden campus) and Director of Admissions John Scott (Newark campus) executed the same notification letters and delivered them on Webb's behalf to the support staff (20T40).

These letters also informed the employees that the division of personnel services was prepared

to provide them with information concerning their contractual rights, other employment opportunities, the status of their benefits, the procedures for expediting unemployment claims and techniques for resume development and job search strategies. She urged them to contact personnel immediately. In addition, Webb instructed them to schedule leave for any unused leave time and instructed them to “surrender to your supervisor by this date any and all University property in your possession and/or at your disposal” (R-130 through R-144).

After Webb delivered the letters she conducted a group meeting with the New Brunswick support staff in the Busch Student Center (20T40-20T41). She explained the need for the restructuring and the creation of the principal clerk positions. Webb urged them to apply for the new positions (20T41-20T42). Finally, she indicated that they did not have to go back to their work stations that day but could simply leave the office. Most took Webb up on her offer (20T42).^{44/}

147. On May 23, 1997, Webb also personally delivered a layoff notification letter to Hodos (R-145, 20T43). It indicated that his position as senior associate director-range 32 was eliminated and that “in accordance with University Regulations (Book 1, page 1.84) [he] would be compensated for the next 125 working days given [his] employment at the University has exceeded 25 years of service” (R-145) The rest of the letter was identical to Randolph’s, including the admonishment to “remove your personal belongings from you office by 4:30 p.m. today . . .” and “. . . surrender to me the

^{44/} In addition to the fifteen laid off support staff and two lost to attrition, Webb notified five principal secretaries on the three campuses of changes to their status (20T50-20T51). Two secretaries in New Brunswick were offered full-time, twelve-month positions and one was offered a part-time, twelve-month position (R-146 through R-148). One secretary on each of the other campuses was asked to continue in their principal secretary positions (R-149, R-150).

university property in your possession . . . ” (R-53, R-145).

Even though during notice period University policy was that employees still fulfill their job functions, Webb informed Hodos that this was not necessary. She relieved him of all assigned duties during the 125-day notice period. She suggested that staff in the human resource department were ready to assist him by providing him work space to prepare his resume and search for a new job (20T44-20T45). He left the office around 12 p.m. (20T45).

148. Also, on May 23, 1997, at approximately 10:20 a.m., Webb went to Randolph’s office and told him that his position was being eliminated and that the resources from his position were to be used to effectuate changes in the office. Like Hodos, he was given six hours to vacate his office. Prior to Webb’s notification, Randolph had no knowledge that his position was being eliminated (9T33-9T34).

Webb also gave Randolph the May 23, 1997 letter. It was identical to Hodos’ letter except for the position being vacated (Randolph’s position was senior admissions officer at range 27; Hodos’ position was senior associate director-range 32) (R-53, R-145, 9T80-9T81, 20T45-20T46).^{45/}

The letter stated as follows:

This is written to inform you that, due to budgetary and operational considerations, your position as senior admissions officer II-range 27 has been eliminated from the Office of University Undergraduate Admissions effective immediately. In accordance with University Regulations (Book 1, page 1.84) you will be compensated for the next

^{45/} On cross examination, Randolph was hesitant to admit that the May 23, 1997 letter from Webb was given to him upon separation, but he did admit that he was very upset at the time and now believes that it was the letter given to him by Webb. Moreover, Webb testified that she gave Randolph the letter (R-53, 20T13).

125 working days given your employment at the university has exceeded 25 years of service. Any accrued, unused and/or earned vacation, personal holidays and/or administrative leave days due you must to [sic] be charged against this 125 day notice period beginning on Tuesday, May 27, 1997.

After today you will not be permitted to return to this office. By releasing you from your assigned duties, I am providing you with an opportunity to dedicate your full-time efforts and energies towards identifying job opportunities and ultimately securing new employment. The Division of Personnel Services is prepared to provide you with information concerning other employment opportunities, the status of your benefits, the procedures for expediting unemployment claims (if necessary) and techniques for resume development and job search strategies.

Please remove your personal belongings from your office by 4:30 p.m. today. In addition, please surrender to me the university property in your possession and/or at your disposal prior to your departure. I wish you every success in your future employment pursuits. [R-53]

When Webb gave Randolph his letter she explained that she was in the process of reorganizing and that there would be fewer senior managers in order to redeploy resources to hire other staff. She requested that he remove his personal belongings from his office and explained that he would not be required to continue his duties during the 125-day notice period. Webb suggested that Randolph contact human resources to assist him, particularly by providing him office space (20T46-20T47, 20T133). She wanted Randolph and Hodos to devote one-hundred percent of their energies to finding new employment (20T134). Randolph left the office by 12:30 or 1 p.m. (20T47).

This was not the first time Webb requested that an employee leave on short notice. Sometime prior to May 23, 1997, Webb had asked another New Brunswick employee, Barry Whitman, to leave the admissions office on the same day that his employment was ended (20T47). Based on his letter of

resignation, it appeared to Webb that Whitman would spend the last two weeks of his employment at Rutgers using University resources to do damage and spread ill will (20T48).

Additionally, former Associate Director of Personnel Services Waldman testified that it was not highly unusual for an employee who was laid off for budgetary or other reasons, e.g., not discharged for cause – to be given only a number of hours to be on the premises (11T57, 11T82-11T83, 11T90-11T91). The decision as to how long an employee would remain on the job is made on a case-by-case basis depending on the organization's needs (11T82-11T83, 11T91). Waldman specifically recalled that the restructuring in Randolph's department called for moving forward as rapidly as possible to get the new structure in place in order to meet the goals as defined by the reorganization (11T58). Norman testified that giving Randolph, a thirty-year employee, short notice to leave the premises after his layoff would not be the normal course of events but he did not know why it was done in those circumstances (19T111).

Randolph Application for other Positions

149. After the layoff notification, Randolph chose to retire effective December 1, 1997, because he had two children at Rutgers and he would have lost tuition benefits as well as health benefits (9T48, 9T82).

Upon separation Randolph received supplemental compensation on retirement for unused sick days (\$9,000) as well as 125 working days based upon his length of service. The total retirement benefit inclusive of the \$9,000 came to approximately \$15,428. These payments were in compliance with University policies and procedures (R127, 9T81-9T82, 20T36). After December 1, 1997, Randolph began receiving payment under the TIAACREF retirement system; he receives

approximately \$47,000 per year (9T84). At separation, his salary was \$57,000 per annum (9T85).

He applied for other positions at Rutgers, including assistant dean at Cook College, director of admissions for the business school in Camden and director of admissions for the law school in Newark (9T48-9T49). According to Randolph, he met the minimum requirements for the positions. In fact, he described himself as overqualified (9T49).

Randolph received only one interview which was for the Cook College position (9T49). He was interviewed by two faculty members and Associate Dean of Academic Affairs Robert Hill (9T75-9T76). Afterwards Randolph received a brief letter from Dean Hill informing him that he was not selected because there were many qualified candidates and they selected someone more qualified (9T76). Randolph tried several times to reach Hill to discuss the matter. Hill eventually called Randolph but he was not home. Randolph never followed up because he was "a little p.o.'d about not getting the position" (9T77). However, Randolph did speak to Hill's predecessor, Lee Schneider, who told Randolph that an internal candidate was selected. Schneider was both a friend and professional colleague of Randolph's but was not involved in the selection process for the Cook College position (9T78).

150. At the time that Randolph was notified of his layoff in May 1997, the budget lines did not exist for the new admissions officer I or II titles created as a result of the restructuring. When the positions were finally posted, which was during his 125-day notice period, Randolph could have applied as an internal candidate and been considered but he did not apply for the downgraded positions (20T116-20T117, 20T119).

The individual that was hired for one of the new admissions officer I positions in New Brunswick, Christen Samuelson, was an external candidate who had extensive experience in geomarketing research. She and the new director of admissions at the Newark campus who also had previous experience in geomarketing research, became a training team for others in the undergraduate admissions office (20T138).

Results of the Undergraduate Admissions Restructuring

151. Despite a projected increase in the rate of high school graduations since 1997, Rutgers' increase in applications has exceeded the rate of high school growth in New Jersey and the seven surrounding states by about 20 percent (20T147). Geomarketing activities assisted the University in increasing their applicant pool from 23,000 to 29,000 applications (20T138-20T139).

Finally, minority recruitment efforts have not suffered as a result of Webb's restructuring of the office of undergraduate admissions (20T140). Her strategic plan required that when a recruiter was responsible for a particular market, the recruiter addressed University objectives in terms of targeted populations such as minority students and put together a plan to identify them, listed schools to visit and described a communications program to yield enrollment once the student was notified of admission (20T141). The result has been an increase in the number of minority scholarship recipients (20T137, 20T149).

JANE CHEPITCH

Chepitch Background

152. Since February 1998, Jane Chepitch has been employed as a business manager at the Children's Institute in Verona, New Jersey (10T108).

153. Previously, Chepitch was employed by Rutgers for approximately 30 years. She was promoted successively to various positions, including but not limited to, senior clerk stenographer, principal clerk stenographer, secretarial assistant, administrative assistant, business manager for the evening division at the Newark campus of University College, and manager of special accounts (10T109-10T111).

In 1987, Chepitch was promoted to the position of business manager on the Newark campus of the Faculty of Arts and Sciences (FASN) servicing approximately 6,000 undergraduate students (10T111, 18T6). Chepitch was responsible for accounting and budgetary oversight for t34 State accounts totaling \$19 million, and 200 non-State special accounts, including grants and discretionary accounts, totaling \$14 million. She also managed staff lines for 330 faculty, teaching assistants and staff members as well as 200 part-time lecturers (R-74, R-112, R-113, 10T109, 15T64, 18T6-18T7).

Chepitch's duties included fiscal planning and budget management for 26 FASN departments (R-74, 10T109, 12T100). She supervised one secretarial assistant, one or two part-time, hourly employees who were hired as funding became available and three or four work study students (12T100-12T101).

In carrying out her responsibilities, Chepitch's first priority was to assure proper payroll practices, e.g., employees on the payroll receive the correct paycheck (21T68). Her second priority was to keep the department's budget in the black to avoid reductions in funds for the summer session or the following year's budget (21T67-21T68). It was also necessary to keep the FASN accounts as close to the annual budgeted amount as possible, so that unexpended monies would not be returned to the University for use on other campuses (18T34-18T35, 21T68, 21T87-21T88).

A June 1997 reorganization of the FASN eliminated the business manager position. Chepitch became interim manager of IDR (Instructional and Departmental Research) Resources during the reorganization and transition period (R-67). On or about September 23, 1997, Chepitch left her temporary position of interim manager position and requested a leave of absence due to sickness (R-70, 12T25-12T26). Sometime in December 1997 or January 1998, Chepitch took a position in the postal facility on the Kilmer campus of Rutgers University (11T119). Several weeks later she left the postal job to accept the business manager position at the Childrens Institute (11T120).

154. During her employment at Rutgers, Chepitch received several degrees from the University, including her B.A. and M.A. in history and her M.B.A. in management (10T111-10T112, 13T5, 13T9, 13T93-13T94).

From 1990 to 1995, taking evening classes, Chepitch earned her M.B.A. degree from the Rutgers graduate school of management, department of organizational management (12T109-12T110, 13T5-13T7). Other than core required courses, most of Chepitch's electives were in the field of organizational management (R-81, 13T11). Chepitch took only one computer information course offered by the graduate school's department of management science and information systems (R-81, 13T12).

Activities in Administrative Assembly, 1995 CWA Organizing Effort, and 1996 RAPSS Campaign

155. In the late 1960's or early 1970's, while Chepitch was a secretarial assistant, she led the successful effort to unionize the University's clerical staff (10T110, 10T112). Chepitch was not eligible to join the union, however, because she was a confidential employee (10T112).

156. In 1976, Chepitch joined the Administrative Assembly where she held various Assembly

offices, including president, vice-president and treasurer. Beginning in 1984 she continuously chaired different Assembly committees, including the salary and compensation committee, the policy and procedures committee, the presidential award committee, the benefits committee, the nomination committee and the employment security committee (10T113).

157. In the spring of 1995, when concerns over health benefits and other issues such as merit pay and budget cuts surfaced, Chepitch became actively involved in the CWA organizing effort on the Newark campus (10T124-10T125). She participated in luncheon open-house meetings, reported informally about the campaign to the other Newark campus business managers at their monthly meetings and discussed the organizing effort informally with deans, directors and other people in her building (10T125-10T126, 12T80). Chepitch also met occasionally with FASN Dean David Hosford and FASN Associate Dean for Administration Gerald Warshaver and had general conversations about the unionization effort (R-111, 10T125-10T126, 10T133, 16T4).

Additionally, Chepitch discussed her union activities with Newark Provost Norman Samuels during a luncheon meeting on June 23, 1995 (10T133, 12T88). She recalled that discussion because Provost Samuels took her to lunch to pay off a bet she had won with him having to do with a prediction about whether it was going to snow (10T133, 12T89).

Chepitch believes that Steven Otzenberger, University Vice-President Richard Norman's representative to the Assembly, knew of her CWA unionization efforts because of her activities on various Assembly committees, although she never had a specific discussion with him about her union activities (6T62, 10T134). No other record evidence supports that Otzenberger knew of her 1995 union activities as a result of her participation in Assembly activities.

Vice-President Norman, however, knew that Chepitch was a CWA supporter because she attended the meetings conducted by a Commission staff agent after the CWA representation petition was filed in June 1995 to discuss the appropriate unit configuration and set up the election (19T38-19T39). There is no other record evidence that Norman knew of her union activities before June 1995.

Norman first met Chepitch at an Assembly meeting in 1991 just after he became vice-president for administration and associate treasurer (19T36, 19T53). Norman attended Assembly meetings at that time in order to get acquainted with the delegates. He remembered Chepitch as being one of the more outspoken delegates. In particular, he recalled a conversation with her about the University's merit award program for APS staff because Chepitch told him "... the people who do what the boss wants will get a merit increase" (19T36-19T37). Norman particularly remembered this conversation because he was dumbfounded by what she said; it was obvious to him "... that people who do what the boss wants, do receive merit increases" (19T37).

158. Although Chepitch was active in the CWA campaign, her name did not appear in any of the CWA mailings. According to Chepitch, the reason her name did not appear in campaign literature was because she was warned not to be a visible union supporter. When she applied for a position as director of business services in the office of business services on the Newark campus, Geraldine Brooks, the director of the Newark personnel office and member of the interview committee, told Chepitch that to be considered for the position, she "... should really lay low on unionization activities and not have [her] name linked" (CP-6 through CP-12, 10T127, 12T81-1282). According to Chepitch this conversation occurred in July 1995 on the Newark campus (10T127-10T128). Brooks

did not testify. Chepitch also testified that there were other people at the University who warned her that such visibility in the unionization effort might have future consequences for her, but when asked who these individuals were she refused to name them “. . . because some of them are still there and I fear they might be harmed” (10T136, 12T89-12T90). She also did not know the dates or times when these conversations took place (12T90). I do not credit or give weight to her testimony that “other people” gave her a similar warning. There was no corroboration for such a finding. Moreover, with regard to the alleged Brooks remark, I did not find Chepitch to be a reliable witness. Consequently, I draw the adverse inference regarding her testimony. [See my discussion on Chepitch’s attitude in the analysis].

I find that Chepitch’s name and picture did not appear in any CWA literature because she had a fear, founded or not, that her name should not be included.

159. After the 1995 CWA election, on May 13, 1996 Vice-President Norman sent a memorandum to employees eligible for the State Health Benefits Plan informing them of the University’s intent to treat all employees (unionized and non-unionized) equally on the issues of cost sharing for health benefits resulting in a decision that Rutgers would pay premiums for non-unionized employees until an agreement on cost sharing was reached with the unionized employees (R-23, 12T78).

In response to Norman’s memorandum, Chepitch sent an e-mail to Otzenberger:

Dear Steve, Thank you and please also thank Richard for keeping your word that nonaligned staff would not be disadvantaged. This whole traditional health payment problem caused much anguish for all of us and I do hope everything will settle into place sometime soon....Thanks again for all your help and advice. I know I really appreciate your help and so does everyone else on the Assembly [R-72]

Chepitch and Beverly Tarter also had lunch with Otzenberger sometime after the CWA

election. They discussed, and Otzenberger encouraged them to continue their Assembly activities.

Chepitch and Tarter told Otzenberger that there was a new CWA organizing effort. According to

Chepitch, Otzenberger seemed surprised by the news (9T130-9T131).

160. Chepitch's last involvement with CWA union activity was in 1996 when the second union organizing campaign known as RAPSS began in March of 1996 (CP-14, 3T66-3T68, 13T141).

Chepitch handed out the RAPSS brochure to interested individuals in her office and other places in her building (CP-14, 21T67). Her name does not appear in the brochure (CP-14). Chepitch never discussed her participation in RAPSS with FASN Dean Hosford (21T66, 18T4).

The RAPSS effort fell apart in the summer of 1996 (3T72, 5T22, 5T28, 5T30).

1994/1995 Chepitch Performance Appraisals

161. Associate Dean for Academic Affairs Virginia Tiger was Chepitch's supervisor from 1991 to 1996. In the summer of 1996, Tiger was replaced by Dr. G. Miller Jonakait (18T8-18T9, 12T32, 21T80).

Tiger prepared a performance appraisal for Chepitch each year (CP-67, CP-68, CP-69).

In March 1994, Chepitch received a performance appraisal indicating that she met or exceeded performance standards in all responsibility categories. Among Tiger's comments are the following:

. . . Of important aid to the Associate Dean's office has been Ms. Chepitch's facility in maximizing resources available during yet another period of fiscal austerity and retrenchment

Ms. Chepitch has once again met the standards described offering . . . timely information about departmental budgetary expenditures and expenses to her supervisor. Of note in this context is her effective stewardship of the budget, one so effective that its adjusted sheet of deficit \$2000 came not to be penalized.

In relation to advising the Associate Dean on the availability of weighted positions and funds for PTLs, Ms. Chepitch has again exceeded expected standards Of note is her current supervision of a developing PTL data base requested by the union for purposes of ongoing contract negotiations between the University and its part-time lecturers. [CP-67]

Chepitch responded to the appraisal stating that:

Permission was granted to attend NACUBO's American Institute of Management Program at Cornell University in July for professional development.

The goal of placing the PTL Database on Novell so that it can be accessed by Dean Tiger and her secretary was established. Discussion regarding the possibility of taking a day class in order to complete my MBA requirements next academic year occurred. [CP-67].^{46/}

Only Tiger and Chepitch signed the performance appraisal. There is no signature or comment for the next level supervisor (CP-67).

162. In Chepitch's March 1995 performance appraisal, Tiger also wrote that Chepitch met or exceeded standards in all areas of responsibility (CP-68, 13T81-13T82). Most of Tiger's specific comments were the same as the previous year. Additionally, Tiger praised Chepitch's work in ". . . implementing the new on line FACS budget management system for FASN's business office and the assistance she provided department secretaries in their use of the new system for the maintaining and review of departmental financial records" (CP-68).

^{46/} Tiger had approved Chepitch's attendance to attend the NACUBO's training. NACUBO stands for National Association of College and University Business Officers (13T80-13T81).

Chepitch responded:

If a one-day conference is offered which is relevant to my work, permission will be sought to attend.

The goal of discarding old files and papers some time during the summer was established. It is estimated that a two-week period will be needed to complete this task. [CP-68]

Once again, only Chepitch and Tiger signed the performance appraisal.

1995 Chepitch Position Analysis

163. In March 1995, Chepitch prepared a position description questionnaire form triggering a formal evaluation by the University's personnel department. Chepitch wanted to establish that she was entitled to a higher job classification based on her duties and responsibilities (R-112, 16T15, 16T74). This was not the first time Chepitch had expressed an interest in having her position upgraded (16T76). Chepitch often complained to Associate Dean Warshaver that she was "underappreciated or under compensated" (16T74, 16T147).

Chepitch submitted the questionnaire form to Tiger who requested Warshaver's assistance in revising it to conform with Tiger's thoughts on how Chepitch's job should be described and performed (R-112, 16T15, 16T83).^{47/} Chepitch's original submission, along with Tiger's revisions, was forwarded in May to the Newark personnel department together with Tiger's endorsement approving the initiation of the evaluation process (R-112, 16T124). Among several revisions to the job

^{47/} Although Warshaver did not directly supervise Chepitch, as associate dean for administration his responsibilities included signing-off on all authorization forms pertaining to non-academic staff hiring and position review (R-111, 16T72-16T73, 21T80).

description, Tiger added the responsibility of budget planning and modeling (R-112).

In June 1995, Tiger forwarded to personnel a second revised position analysis and evaluation form describing the duties and responsibilities of business manager incorporating some of the changes suggested by Warshaver (R-113, 16T16-16T17, 16T83). The process never got to the point of actually evaluating whether Chepitch was entitled to an upgrade because a common job description was not worked out between Chepitch and Tiger (16T83-16T86).

Tiger and Chepitch: 1995/1996

164. Tiger and Warshaver had offices next to each other and would often discuss their work (16T104). Besides the disagreement over Chepitch's job description, Tiger was also exasperated with her (Tiger's) inability to get a handle on the FASN budget. Tiger attributed her difficulties to Chepitch's confrontational attitude and her failure to give Tiger the kinds of reports and information she needed (16T104-16T105, 16T107, 16T115). Specifically, Tiger told Warshaver that she could not meet the demands from the various departments for multi-year projections or what instructional resources were available to plan courses for more than one semester ahead because Chepitch was not helping her by giving her necessary information (16T28-16T29).

Warshaver encouraged Tiger to make it clear to Chepitch what kind of support she needed (16T116, 16T118). He did not feel that the University's progressive discipline policy was applicable to this situation because it was a matter of addressing a work attitude as opposed to a specific work-related issue like tardiness (CP-72, 16T119-16T121). The appropriate approach in his opinion was to suggest improvement (16T121-16T122).

Tiger followed Warshaver's advice and suggested a plan for improving Chepitch's performance

in reporting and communication processes and procedures reflecting the concerns Tiger raised in her conversations with Warshaver (CP-69).

Chepitch 1996 Performance Appraisal

165. In March 1996, Chepitch received her performance appraisal from Tiger (CP-69, 13T82).^{48/}

After finding that Chepitch met performance standards adequately, managing the routine work of FASN's business office, Tiger wrote:

This appraisal is taking advantage of the evaluation procedure to lay out plans for the forthcoming year, plans that should address the need at both the Dean's end and that of the Business Manager to streamline in a more systematic way the reporting and communication procedures relating to budget balances and commitments and available resources. In the past, there has not been a user friendly systematic flow of information from one unit to the other and back from that unit to the former. This is an area in need of improvement since up to three individuals at the Dean's end can commit resources independently, without necessarily knowing what monies have already been expended, what are outstanding, and what are the weekly or monthly balances. What is needed is the establishing of proper channels of communication:

*Charts should be developed that present user-friendly reports on standing accounts and projected balances in light of commitments. (A possible model is the informative chart that tracks FASP leaves and available dollars.) In addition to timely, accurate and user-friendly reports from the Business Manager on standing accounts and projected balances in light of commitments, appropriate channels of communication to the Business Manager should be established.

^{48/} Although Chepitch's position was not upgraded, this appraisal was in a different format than previous appraisals because of the May 1995 position analysis and evaluation of Chepitch's job. It was not broken down into different appraisal categories (CP-69). There was only one major heading based on subcategories of financial management, financial forecasting, instruction, responsibilities, supervision, contacts (CP-69).

*In the area of PTL appointments, the Business Manager should seek ways to streamline or automate as much as possible the several steps in the procedure so that the Associate Dean Need only make the initial department allocation and provide the final signature. Charts should provide balances in the context of used weighted positions and dollar amounts.

*A timetable for reports on accounts should be developed.

*Charts should be developed that track grants.

Given the years of experience and demonstrated skills in managing the business office that the Business Manager possesses, one can look forward to and expect in the coming year the establishment of improved reporting and communication processes and procedures. [CP-69] [Emphasis added.]

166. Chepitch responded in writing to the 1996 appraisal because she wanted to remind Tiger of her previous year's efforts and accomplishments (CP-69, 10T115). She wrote in pertinent part that ". . . Dean Tiger agreed with [her] request that [she] be allowed to upgrade [her] computer skills and to learn new software by attending a computer/software class or classes during the coming year . . ." (CP-69).

167. On April 26, 1996, Dean Hosford signed off on Chepitch's 1996 performance appraisal (CP-69, 18T4). He commented that:

Ms. Chepitch has turned in a good job as business manager this past year. Indeed, the standard of performance is quite fine in a number of areas which are noted in her comments about Dean Tiger's appraisal of performance. However, there are other areas – e.g. establishment of improved systems and formats for financial reporting and the need to envision new strategies for managing resources in a changing business environment – that could be improved. [CP-69]

Although he had not signed off on Chepitch's previous two appraisals, Hosford signed the

1996 performance appraisal. Since Chepich disagreed with Tiger's 1996 appraisal, Hosford felt he had to respond (18T105, 21T60). Chepich and Hosford never discussed his comments in her 1996 appraisal (CP-69, 21T63).

The parties dispute whether Hosford's failure to sign the two previous performance evaluations was a violation of Vice-President Norman's performance appraisal procedures issued in December 15, 1995 (CP-67, CP-68, CP-74, 21T61). That procedure required Hosford as the next level supervisor to review the appraisal completed by all other supervisors, comment, if appropriate, and sign off (CP-74, 21T61). Chepich believes that whether an employee puts a negative, positive or no comment under existing procedures, Hosford was required to sign her evaluation (21T60).

Chepich's March 1994 and March 1995 performance appraisals pre-dated Norman's December 1995 procedures (CP-74). Therefore, Hosford's failure to comment or sign the 1994 and 1995 appraisals could not have violated Norman's procedures. There is no evidence in the record what procedures, if any, existed prior to December 1995. Hosford's comments and sign-off on the 1996 evaluation was consistent with the 1995 procedures.

168. On April 25, 1996, the day before Hosford signed Chepich's appraisal, Chepich met with Hosford, Warshaver and Tiger; they informed her that Ms. Alfonso, a head accounting clerk, who reported directly to Chepich was being laid off (18T79, 21T64-21T65). This layoff was the result of another in a series of budget cuts in the FASN dean's office and elsewhere in the University (18T107-18T108).

Chepich was upset because without Alfonso's help, she believed there was no way she could physically or mentally perform the tasks outlined in Hosford's comments on her 1996 evaluation (CP-

69, 21T64-21T65). Hosford disagreed. He felt that it was possible for Chepitch to manage her job without the assistance of the clerk who, he noted, reported not only to Chepitch but to several people who were also impacted by the layoff (18T79, 18T105-18T106).

Alfonso was eventually replaced five weeks later after Associate Dean Gary Roth was hired (21T65). Both Roth and Chepitch sought a replacement (21T65).

Chepitch Job Training Opportunities

169. Chepitch contends she was denied general job training opportunities both inside and outside the University (12T67). Her contention is not supported by the evidence.

In her 1994 performance review, Chepitch observed that she was given permission to attend a NACUBO management program (CP-67). Tiger gave her permission to attend which was paid for by the University (CP-67, 12T77, 12T104-12T105, 13T80-13T81).

Sometime before 1992, Chepitch requested permission to attend a three-day training course in Baltimore for business managers (12T105). Initially, Associate Dean for Academic Affairs Jeffrey Slovak denied permission. After Dean Hosford and Slovak heard her reasons for wanting to attend, they allowed her to go (12T106, 12T108). The University paid for her course (12T107).^{49/}

Finally, sometime between August 1996 and January 1997, Associate Dean Gary Roth, Chepitch's supervisor at that time, suggested to Associate Dean G. Miller Jonakait that Chepitch

^{49/} Chepitch felt that initially Hosford's refusal to approve her request to attend the course was unfair and discriminatory because Slovak was going to attend a summer long course in training to become a dean (12T106). Hosford, however, felt that Slovak's month long administrative training session was not comparable to Chepitch's short term meeting (18T30). Nevertheless, when Chepitch threatened to complain to the Equal Opportunity Employment office (EOE), permission was granted for her to attend (12T106-12T107, 18T30).

receive computer training (12T103-12T104). Chepitch took three computer courses at Chubb Computer Services – Introduction to Windows, Excel and Word (12T102-12T103, 12T112-12T115, 13T44, 18T28).^{50/} The University paid for the courses (12T103). Another employee, Sally Casper, also took a computer course at Chubb at this time (12T117). Casper took a more sophisticated computer course than Chepitch's word processing courses. Casper learned Microsoft Access which involved creating and manipulating databases (12T117-12T118).

The record reflects one instance when Chepitch was denied permission to attend classes. Between 1990 and 1995, Hosford denied Chepitch's requests to attend classes for her M.B.A. during working hours. Rutgers employees have an educational benefit of attending courses tuition-free (18T31). Hosford and his predecessor, Norman Samuels, had a general rule which applied to all FASN staff members: educational benefit classes should not be taken during the working day. The reason for the rule was to ensure equitable treatment among employees where some could easily reschedule their work days to attend classes while others could not because of the nature of their assigned responsibilities. In any event, most courses were offered in both the day and evening so it was not a hardship for the employees (18T32-18T33). Besides Chepitch, several other FASN employees took advantage of the tuition-free educational benefit program by earning their undergraduate and graduate degrees during non-working hours (18T33-18T34).^{51/}

^{50/} Chepitch's testimony as to the exact dates of the courses was inconsistent (R-75, 12T112-12T115). It is not necessary for me to resolve this inconsistency since there is no dispute that she took the courses or that the content of the courses was computer training.

^{51/} According to Chepitch, Hosford told her he denied her request because she was too indispensable to the office (12T68, 12T75, 12T108-12T110). The explanation is not

(continued...)

Based on the foregoing, I find that on several occasions between 1985 and 1997, the University gave permission and paid for Chepitch to attend training courses outside of the University. Deans Hosford, Tiger, Jonakait, and Roth granted her permission to Rutgers' workshops relevant to various aspects of her job (12T73-12T74). According to Chepitch, permission was granted by Deans Hosford, Slovak, Tiger, Jonakait and Roth ninety percent of the time (12T74, 12T108).

170. Chepitch also contends she was concerned about learning new computer software in order to better serve the department; she continuously asked to attend computer classes but was never afforded the opportunity to do so (10T115-10T116). I do not credit Chepitch's contention. Beside the 1996/1997 Chubb computer courses paid for by the University and approved by her supervisor, in a 1985 Chepitch attended a micro-computer training program (R-104, 12T103-12T104, 18T28).

Additionally, during the 1990's, computer training was available to Rutgers employees from three sources: RUCS (Rutgers University Computing Services), the management school and through the library system (18T10, 18T27-18T28). Sessions were frequently conducted during the day (18T28). Chepitch was eligible to attend, did not need Hosford's permission to do so nor did he ever deny her an opportunity to attend in-house job training (18T28).^{52/}

Charging Party's witness, Assistant Dean for Budget and Information Marie Melito, confirmed

51/ (...continued)
inconsistent with the educational benefit rule followed by Hosford and Samuels. In any event, I need not resolve this dispute because Hosford's denials, which began in 1990, pre-dated Chepitch's involvement in the CWA campaign (12T111)

52/ It is unclear from the record, but it appears that the educational benefit rule, e.g., taking classes toward degrees in non-working hours -- did not apply to non-degree courses related to job training.

that computer training was offered by the University. She learned of the training through staff notices and enrolled in the courses which were usually offered during the day free to employees. She needed no approval to attend these training sessions (14T51). Melito, a 30-year employee, worked on the Rutgers campus of the Newark law school. Her career path was similar to Chepitch's in that Melito held several clerical positions before being promoted to assistant dean (14T50-14T51).

Based on Hosford's and Melito's testimony, I find that in-house computer training as well as outside training was available to Rutgers' employees. I find no evidence in the record that Chepitch was denied access to this training or that the same training opportunities were not made available to her during her career at the University.

David Hosford

171. Between 1982 and June 30, 1998 David Hosford served as dean of the FASN in Newark. In 1998, he retired as dean and currently holds a tenured position as professor of history at Rutgers (18T3-18T4).

In the early 70's, Hosford was one of several assistant professors who collected signatures in support of the AAUP which organized the University's faculty. Shortly thereafter, he moved into administration and became ineligible for membership. Since his retirement from his position as dean, he has become a member again (18T20).

When he was FASN dean, Hosford handled routine union matters such as a faculty grievance (18T21). He was also assigned to assist the University in its negotiations with the AAUP for the contract which preceded the current agreement (18T21-18T22).

172. Hosford knew Chepitch for more than 20 years both professionally and personally. They

lived in the same community and would occasionally ride to work together (18T18).

Hosford considered Chepitch to be “diligent, hard working, occasionally a bit abrasive” (18T19, 18T27, 18T96). In the office hierarchy Chepitch reported to the associate dean for academic affairs (Tiger from 1991 to 1996 then Dean G. Miller Jonakait from 1996 until Chepitch left Rutgers in 1998) and also, for a brief period of time beginning in May of 1996, to Associate Dean for Instructional Resources Gary Roth (18T19, 21T6-21T8).

Hosford did not supervise Chepitch’s day-to-day activities (18T19).

173. Hosford was aware of the 1995 CWA campaign and knew of Chepitch’s support of the organizing effort because he spoke to her in casual conversation (18T22). However, he was not aware of any continuing efforts to organize in 1996 nor did he care what Chepitch’s views on unionization were (18T22). He was not a member of Norman’s focus or advisory groups after the 1995 election (18T24).

Hosford knew that Chepitch was very active in the Assembly and in various Assembly committees because she was absent from the office one day every two weeks on average to attend Assembly activities (18T25). Chepitch did not need his permission to attend these sessions nor did she seek it (18T26).

FASN Background

174. As FASN dean, Hosford was the principal academic officer of the FASN responsible for 21 academic departments as well as non-academic staff and approximately 6,000 students. He was also responsible for curriculum, academic programs, planning, budget, external relations, outreach and a variety of special programs (R-108, 15T64-15T65, 18T7).

Various associate deans who were responsible for these activities reported to Hosford. They were the associate dean for academic affairs/dean of instruction who had many responsibilities including direct oversight of the FASN budget; the associate dean for external programs academic foundation center (AFC); the associate dean for student affairs; and the associate dean for administration (R-108, 12T98, 18T7-18T8). Dr. Gerald Warshaver held the title of associate dean for administration from 1991 until after David Hosford retired in 1998 (18T9).

175. During the years Hosford was FASN dean, State appropriations in the FASN budget, approximately 20 million dollars, fluctuated depending on the economy and the administration (18T10). Other budget sources such as grants, contracts and gifts grew during Hosford's tenure from one million to ten million dollars (18T10).

During the first half of the 1990's, about ten percent or two million dollars of the FASN budget was cut (18T108). Also, approximately two dozen FASN salary lines were lost (18T109). Other units throughout the University were similarly impacted during this period (18T110).

Hosford' Decision to Bring Gary Roth to the FASN

176. Gary Roth was an administrator in the office of student affairs for many years with responsibility for, among other things, supervising budgets and all computerization, including networking and the purchase of software for the office (R-159, 18T11-18T12, 21T6, 21T8-21T9). Roth also had experience in systematizing instructional resource demands. He had worked previously with Associate Dean for Academic Affairs Tiger, explaining to her what the needs of filling courses were and allocating budget resources to fill those needs. He also assisted her in understanding how to create programs to fill student demands. They worked well together (16T30-16T31). Roth had a doctorate in economics

and social sciences (R-159).

In the spring of 1996, Hosford brought Roth into the FASN dean's office from student affairs to assist him with the FASN budget situation. The transfer to FASN was a lateral move for him (16T25). Roth did not replace anyone at FASN but was added to Hosford's staff (18T15).

In the FASN, Roth was given a new title and responsibilities as associate dean of instructional resources which required him to exercise operational oversight of all budgets for FASN operations, do multi-year planning of instructional resources to cover projected academic schedules of classes and supervise the business affairs of the FASN (R-114).

Roth had no training *per se* in computer programming or designing computer programs, but he was very proficient in using basic office software, word processing, spread sheets and some data bases because of his prior job experiences (16T140, 21T8, 21T10-21T11).

177. Hosford had several reasons for creating a new position and bringing Roth to the FASN. First, Hosford wanted Roth to act as a buffer and assist with the tensions which had arisen between Chepitch and Associate Dean Tiger (18T11-18T12, 18T68). Hosford and Warshaver discussed these tensions. Both felt Roth could help resolve the breakdown in communication between Tiger and Chepitch and the difficulty which Tiger was experiencing in supervising Chepitch (16T26, 16T103-16T104, 16T109-16T110). They knew that Tiger was coming to the end of her tenure as associate dean. Roth would function as Chepitch's supervisor under the new dean (16T109).

Next, Hosford wanted Roth to assist in changing budget management systems because the FASN business functions had not kept pace with modern office practices (16T26, 18T12-18T13, 21T10). Specifically, budget information was difficult to secure on a timely basis, e.g., no regular

weekly or monthly reporting of budget information -- which became an increasing problem as grant activity increased while State appropriations were decreasing (18T13, 18T40, 21T9-21T10). When Roth reviewed the existing budget systems at FASN, he concluded that there was a need in every area of the budget process for systematization and simplification (21T12).

178. Hosford felt that, with drastic budget cuts in the early to mid-1990's, Roth could perform the necessary modeling required to do computerized budget data (18T13). Frequently, Hosford received last-minute mandates from the provost's office to cut funds in the next year's budget which was difficult to do with Chepitch's old-fashioned accounting systems (18T14). Chepitch was never asked to participate in any discussions concerning how the FASN would respond to budget cuts since those meetings took place among the deans. Her role was limited to verifying budget items and figures sent from the Provost's office (21T83-21T84).

Hosford observed that Chepitch applied herself diligently to her job and was able to perform certain functions such as implementing the FACS management system which was a limited mechanical device to rapidly exchange information in the University (18T61, 18T64). However, in his opinion, Chepitch lacked the ability or was unwilling to adopt the more sophisticated technology needed to do long term projections and periodic budget reporting for the myriad categories of FASN expenditures (18T61, 18T64-18T65, 18T96).

Hosford discussed his concern with Warshaver, Tiger and later Jonakait that "... Jane's conduct of that function [her job performance as business manager] harked back to the era of a clerk with a green eye shade hunched over large ledgers, as opposed to efficient utilization of best office technique" (18T36-18T37). Hosford did not communicate his concerns relating to Chepitch's old-

fashioned business practices directly to her. He thought it was bad management style to undermine the authority of immediate supervisors by going around them (18T49). He knew that Chepitch's immediate supervisors were communicating these concerns to her directly because they reported this to him (18T49, 18T60).

Hosford felt Roth could assist Chepitch to rapidly modernize financial management practices which were vital to managing FASN's 30 million dollar budget (18T15, 18T41, 18T69, 21T11). He was particularly hopeful Roth would better manage the use of resources in the PTL (part-time lecturer) area through computerization (18T69, 18T71). Hosford also hoped that bringing Roth to the FASN to work with Chepitch and getting her additional training would begin a process of initiating changes, especially in terms of modernizing the FASN business practices; unfortunately, it did not work out (18T41-18T42).

Dr. G. Miller Jonakait

179. The need to modernize business operations became especially acute when Dr. G. Miller Jonakait replaced Tiger as associate dean for academic affairs in July/August of 1996 (15T68, 15T95). Jonakait was appointed effective July 1, 1996, but she did not assume her duties until late August 1996 (15T99, 15T101). This appointment was Jonakait's first administrative deanship (15T99).

Jonakait was hired to a teaching position in the biology department at Rutgers Newark FASN in 1985. She was tenured in 1990 and promoted to full professor in 1994 (15T59-15T60). Before her appointment as associate dean of academic affairs, Jonakait was chair of the biology department from 1994 to 1996 (12T97, 15T60). When Jonakait was appointed as associate dean, Gary Roth reported to her and Chepitch reported to her through Roth (R-108, 12T97, 15T61, 18T8, 21T80).

As associate dean for academic affairs, Jonakait's job was essentially the same as Tiger's. It included not only chief responsibility for planning, constructing and monitoring all FASN budgetary operations but also assisting with faculty programs and initiatives, monitoring space and equipment and working with department chairs to provide and monitor the use of resources (R-107). Additionally, Jonakait was responsible for working with faculty and staff in the planning, creation and implementation of effective programs of instruction and reconciling instructional needs with available budgetary resources (R-107).

According to Hosford, unlike he and Tiger who had backgrounds in the humanities, Jonakait was a scientist and liked her "columns to add up" (15T67-15T68, 18T41). She was "... particularly concerned that the kind of information she needed to make intelligent decisions about how much money to put aside for faculty travel, how much money to put aside annually for maintenance on expensive equipment, that this kind of information was not readily available" (18T41).

Jonakait did not review or rely on Tiger's performance evaluations of Chepitch. She had her own expectations of what Chepitch's responsibilities were, including the need for her to computerize the business functions (15T96, 15T100). Jonakait also did not review Chepitch's job description because Jonakait knew what responsibilities she needed to have done and what the responsibilities of the dean's office were and eventually concluded those needs were not being met by Chepitch (15T106-15T107).

Jonakait found no planning budget identifying how much money was spent in each category -- the kind of budgetary documentation that other institutions might have to do multi-year projections (15T67-15T68, 15T107). In Jonakait's opinion, Chepitch defined her job as keeping track of what

money was expended for what items in enormous checking account ledgers for each account (R-109, 15T68). Chepitch was very good about making sure that departmental budgets were not overspent. Underspent budgets occasionally required the department to turn money back to the administration (15T92-15T93).

180. Before Jonakait arrived at FASN in August 1996, Hosford explained to Jonakait that Roth's responsibility was to begin to access records and compile information (15T108, 15T111). Roth spent the summer trying to get a handle on exactly where all of the money in the budget was (15T68, 15T102, 15T108). Jonakait and Roth spoke often about the absence of computer systems and the need to implement them (15T108). In August, Jonakait, Roth and Hosford also discussed the difficulties the office experienced in getting information and the business manager's role in that effort (15T87).

In the second week of September 1996, Jonakait and Roth met with Chepitch as a first attempt to understand the source of FASN expendable funds (15T69, 15T102). Jonakait made it clear to Chepitch that it was essential to know precisely how much money was expended in order to plan for expenditures in subsequent years (15T69). During other meetings in September, the same message was conveyed, specifically, "... what [Jonakait] thought was needed, what the computerization needs were, what the ultimate goals of the budget process should be, and what [Jonakait] hoped [she] would be able to expect from [Chepitch]" (15T103). Jonakait did not put any of these orally communicated expectations in writing because in her experience at the University she felt that conversations about how to perform jobs was sufficient (15T104).

Roth also spoke to Chepitch at this time. Although Roth had never discussed the tenure of his

job at FASN with Hosford, Roth never considered his own role to be long term. He was primarily brought in to take a look at the budgeting and resource situations and put the budget on a sounder footing. Roth felt that Chepitch was the central person in the process (21T13). Therefore, he had extensive discussions with Chepitch about where the office was currently, where it needed to go, how that could be accomplished and what the final structure would look like (21T14). Roth was not concerned that what he envisioned would overburden Chepitch because the object of modernizing the office systems was to simplify the budget process and, in the end, reduce her work (21T16).

181. Jonakait was used to dealing with computerized accounting in the biology department (15T69). Although Jonakait was aware that Chepitch had taken computer training at Chubb, Jonakait never observed Chepitch use Excel spread sheets which is a software program designed to track information like accounts (15T70, 15T115). Jonakait concluded that the dean's office never realized the benefit of Chepitch's computer training because Chepitch's major record keeping strategy was an old-fashioned, handwritten account ledger (R-109, 15T70). Jonakait, however, did not ask Chepitch what training, if any, she had nor did she offer any additional training because Jonakait concluded Chepitch had already received computer training and either did not learn it or did not want to implement it (15T117-15T118).

Jonakait felt Chepitch was dedicated to her job, but somewhat abrasive (15T73). She found it was difficult to get immediate access to account balance information and understand the exact source of funding either because Chepitch did not have it or was unwilling to share it (15T73). Jonakait commented at meetings with other deans that the FASN ought to have comprehensive spreadsheets of all of the accounts and that she (Jonakait) was dissatisfied with what was provided to her because she

was not receiving the support she needed (16T113-16T114).

In describing the inadequate support Jonakait received from Chepitch, Jonakait testified as follows:

If I said, for example, "Jane, I'd like to know how much money we spent last year on faculty travel," might be an example.

She would say, "Oh well, it will take me a little while to get those numbers for you."

And possibly two or three days later I would be handed a slip of paper with a – with a number on it, you know, \$40,000.

And I [sic] if I said, "Jane, what account did this come out of," you know, "how much did we spent [sic] the previous year," that sort of – "Oh, well, I moved money in here to there and I did this and that".

And there was no way of getting ready accessibility to her accounting strategy.

So one was dependent upon those little slips of paper.

And if they didn't come, there was no other way of reading her ledgers to get an accurate picture.

In other words, if something had happened to Jane, there would be no way that another individual could have easily come in and reconstructed what is it she had done. [15T73-15T74]

The Roth Disciplinary Letter

182. By October 1996, Roth was frustrated in his attempts to have Chepitch computerize the accounts and wrote a letter to her personnel file documenting his frustration (R-110, 15T75). He showed Jonakait the letter (15T75).

The letter expressed his dissatisfaction with her job performance, specifically her delay in

implementing the computerization of the budget process (R-110). Roth noted that Chepitch had not set up or used her new computer, had postponed a project involving the closing and opening of a series of budget accounts for months and still maintained handwritten budget records (R-110). Roth wrote that the letter constituted "an extremely serious warning" to rectify her (Chepitch's) performance in these areas (R-110).

Chepitch responded to Roth's warning in a six-page, single-spaced letter attaching 23 pages of supporting documentation which detailed the hours she worked at home, on nights and weekends for various projects (CP-73). Chepitch attributed her inability to complete certain projects or assigned work to inadequate staff assistance, her absences for vacation and/or illness, jury duty and the painting of FASN offices (CP-73). As to Roth's criticism that Chepitch had not set up or used her new computer, she wrote that she had to wait for a computer component and furniture to arrive and then for the individual assigned to set up her computer (CP-73).

Regarding the new accounting system Roth wanted her to establish, she criticized his decision to implement it without maintaining the old system as a backup (CP-73). Chepitch also informed him that she had just gotten back from vacation and was too busy with other work to get to a project involving the combining of accounts (CP-73, 21T36). Chepitch then detailed the amount of work which overloaded herself and others. Finally, she objected to the content and tone of Roth's memorandum (CP-73).

183. Roth met with Chepitch after he received her response. He felt the issues raised in Chepitch's letter were irrelevant to his concerns about her performance (21T24). For instance, because of his concern over Chepitch's lack of computer skills and her complaints that she had not

been adequately trained, Roth had previously arranged for her to receive training in Windows, Word and Excel spread sheets conducted at the Chubb computer services (R-75, 21T32-21T33). However, six weeks later when he asked Chepitch to prepare a spread sheet for him, she was unable to and gave him a computer disc in which she manually added the figures not utilizing the spreadsheet function (21T33). Roth never arranged for any other training after that because he observed that Chepitch made no attempt to use any of the skills she had been taught and showed a complete lack of interest and effort in developing computer skills (21T34). Roth never disputed that Chepitch kept herself busy at work but in his estimation she was doing many things that did not need to be done; she was not as efficient as she needed to be (21T36).

184. After Chepitch received Roth's letter, Chepitch went to Jonakait to plead that it not go into her personnel file. Chepitch contended she misunderstood what was needed in her job and just wanted another chance to work with Jonakait and Roth (15T75, 15T80). Jonakait pulled the letter from Chepitch's file (15T75).

On rebuttal Chepitch denied that she "pleaded for [her] job" (21T80-21T81). However, since Jonakait's testimony was that Chepitch pleaded not to have the Roth letter put in her file, there is no dispute.

185. Roth disagreed with Jonakait's decision to remove the letter from Chepitch's file (21T30). After the incident, Roth stopped supervising Chepitch so that Jonakait could work with her directly. He hoped that Jonakait would have more success with her regarding the kinds of changes the office needed to make (21T30-12T31, 21T50).

Subsequently, neither Roth nor Jonakait felt that things improved, e.g., the computerization of

accounts never occurred, particularly keeping track of part-time lecturer expenditures (15T81-15T82, 21T30). For instance, Chepitch never provided the kind of information needed to determine expenditures for future faculty hires (15T84). Jonakait was concerned that Hosford's successor would not have the information necessary to determine what monies to work with because there was no planning budget (15T83-15T84). Chepitch never prepared multi-year projections even though she was expected to and Jonakait communicated this expectation to her (15T85).

The 1997 FASN Reorganization

186. Hosford thought about the business functions in his office for a couple of years and asked Warshaver, who had direct responsibility for supervising administrative employees, to think about solutions (16T36, 18T40, 18T48). This ultimately led to a major restructuring of the office in 1997.

Hosford and Warshaver had discussions throughout 1995 about the business office and at other times over the years (16T39, 16T99-16T100). Warshaver was aware during 1995 that CWA was seeking to organize at Rutgers and knew generally that Chepitch was a CWA supporter. He did not, however, discuss Chepitch's union activities with Hosford, Jonakait or Roth at that time or subsequently when participating in the decisions which resulted in the 1997 reorganization (16T64-16T65, 16T67, 16T143).

In 1995, Warshaver had notified Hosford and Tiger about a complaint he received from an associate provost who was responsible for the management of grants accounting that Chepitch was reluctant to assume the responsibility for oversight of grants (16T36-16T37, 16T93-16T94). As a result of Chepitch's attitude toward grant's management, Warshaver suggested to Hosford that they split the business office in two with one part responsible for instructional and department resources and

the other part for grants and accounts such as endowments and scholarships (16T38). Both parts would require computerization (16T38, 16T96). In line with the new model, Warshaver suggested that the business manager position be dropped down to a lower salary range in order to hire another person at the same lower range to handle grants and other accounts (16T38, 16T96-16T97).

Hosford rejected the suggestion because it created two positions out of one which necessitated two budget lines and lines were too valuable (16T40, 16T98). Also, Hosford felt that one person should be responsible for all of the FASN business affairs (16T40). Additionally, since computerization throughout the business operation was necessary, he did not want redundant systems (16T40).

Instead, Hosford brought Roth on board to help solve some of the problems and put systems in place (16T40).

187. In January or February 1997, Jonakait and Hosford discussed terminating Chepitch (15T88). At no point during the discussion between Jonakait, Roth and Hosford about Chepitch did they discuss her union (15T90). Jonakait was not aware that Chepitch was involved in union activities nor had she seen any of the Administrative Organizers or any other CWA mailings (CP-6 through CP-11, 15T87, 15T135).

Jonakait recommended someone capable of performing the tasks she felt were important be hired; she determined that Chepitch was not that person (15T89, 15T119-15T120). Hosford concurred (15T89). When she made this recommendation in January or February 1997, Jonakait did not contemplate reorganizing the office (15T120-15T122). That decision was made later by Hosford.

188. Hosford did not view Chepitch's failure to modernize the business functions as a matter for disciplinary action or simple remediation (CP-72, 18T51). Tiger, Jonakait and Roth communicated

their expectation to Chepitch that computerization was an important element in terms of evolving financial management systems, sent her for computer training and told her there were difficulties with her performance (18T52-18T54).

By late spring of 1997, after Tiger, Jonakait and Roth tried unsuccessfully to find ways to improve the situation, Hosford determined to take "the drastic remedy" of reorganizing (18T47).

Hosford made the decision to reorganize because he concluded that:

Jane Chepitch was either unable or unwilling to respond to the evolving needs of the institution in the financial area, despite the fact that the issue had been brought to her attention. And despite the fact that there had been attempts to assist her in changing her mode of operation.
[18T96]

For these same reasons, Hosford determined that Chepitch could not stay in her job despite his assessment that she was a diligent and hardworking, although sometimes abrasive, employee (18T96, 18T104).

189. Also, by spring of 1997, Hosford's determination to reorganize the FASN office was driven by his decision to retire as dean. Hosford felt that although he had the experience to "fly by the seat of [his] pants," his successor would be severely handicapped without access to the computerized data provided in a timely manner (18T14, 18T42). Hosford had discussed his decision to leave with Provost Samuels who asked him to stay until a replacement could be found. A replacement was found in 1998 (18T43).

190. Before the 1997 reorganization decision was made, Roth was approached by Jonakait inquiring about his interest in becoming an associate dean of the graduate school under the provost who also served as dean of the graduate school (21T39). This was a promotional position (21T43). It was

not posted prior to Roth's appointment (21T43). Roth had no prior experience in graduate studies. His previous expertise was in undergraduate student affairs (21T43). Roth's tenure as associate dean for instructional resources lasted 16 months (16T32, 18T16, 21T6). His new appointment resulted in the loss of one position in the FASN dean's office since the provost took his budget line (18T16).

Roth was not involved in the decision to reorganize FASN and did not know that Chepitch's position was being eliminated. He learned about it when Chepitch's successor, Richard DaSilva, was appointed to the newly created associate dean position in late summer of 1997 (21T37-21T38, 21T40-21T41).

191. Hosford knew generally how other offices operated, but did not study these business offices for a model. Hosford viewed the reorganization not simply as an exercise in duplicating what had been done in other departments but as an opportunity "to get a fresh notion or concept about trying to manage the resources of the place" (18T77). Also, the FASN encompassed half of the entire Newark campus. Therefore, he concluded consulting with another department, such as the college of nursing which had a total student body of 500, was non-productive (18T78).

192. Hosford's reorganization eliminated Chepitch's position as business manager and Roth's position as associate dean of instructional resources and combined their functions in a new position, associate dean for resources and systems (R-67). Hosford asked Warshaver to write the job specifications for the new position (18T75-18T76).

Jonakait envisioned the person filling the new position would have the computer skills to develop and implement new budgetary and tracking systems (15T105, 15T129-15T130). Additionally, the person was expected to implement computer software throughout the FASN to

enable department administrators to track their own budgets in a similar fashion (15T105). These responsibilities went beyond Chepitch's business manager position (15T105).

Warshaver concluded from discussions with Hosford and Jonakait that the office needed someone who was committed to change and to advancing the office into an information processing mode as opposed to a bookkeeping mode (16T42, 16T100-16T102, 16T112). Warshaver never considered simply hiring an outside consultant to handle the computerization issue (16T135). In his opinion, the job required the individual to develop a level of trust with the deans as well as other staff in order to understand their needs and dedicate resources to cover them. It also required an ongoing commitment to the success of the project, specifically convincing the various departments and personnel to accept the new accounting systems and training them in their use (16T135-16T136). Warshaver felt that a consultant was appropriate where there was a "stand-alone" project but not where the need was comprehensive and continuing (16T135-16T136).

Based on these conclusions, Warshaver prepared a job description for associate dean for resources and systems. On June 24, 1997, he submitted it to Associate Provost for Administrative Services Geraldine Brooks for review (R-68, R-115, 16T42-16T43, 16T47).

The new position replaced the line vacated by Roth although it was at the same range 29 as Roth's title (R-68, R-115, 16T44-16T45). Unlike Chepitch's business manager position, the associate dean for resources and systems had responsibility for systems management and development in the FASN dean's office and the 22 departments (16T49). Throughout the job description developed by Warshaver, there was a greater emphasis on the ability to create computerized models to forecast multi-year projections and use systems to deliver information (R-68, R-115, 16T50). Financial

management duties comprised a third of all responsibilities (R-115).

Specifically, the official job description required a bachelors degree, although a master's or M.B.A. degree was preferred (R-68). Additionally, the job required experience in computerized budgeting and accounting as well as experience in network systems/systems interface or digital information systems together with excellent financial computing, funding administration, organizational and interpersonal skills (R-68).

Warshaver contemplated a candidate with business experience to handle the designing and implementation of cost saving procedures and practices (16T125-16T126).

193. As part of the reorganization, Warshaver also submitted a request to promote Head Accounting Clerk Madelyn Munoz to administrative assistant II to act as support for the new associate dean position (R-115, 16T125). The administrative assistant would handle the day-to-day operational business functions formerly handled by Chepitch (16T45, 16T48-16T49).

194. After making the decision to reorganize the FASN business function, Hosford spoke to both Vice-President Norman and Provost Samuels to give them a "heads-up." He had done this in the past when a decision was going to affect a long-term employee (18T38). This discussion took place before he actually sat down with Chepitch at the end of June to notify her of the reorganization (18T39). Hosford also spoke to Norman after concluding the interview process for the new position in August or September 1997 because the person who was eventually hired as associate dean for resources and systems, Richard DaSilva, required a higher salary range than was originally specified for the job (R-70, 18T39).

Chepitch's union activities were not discussed when Hosford advised Norman of his plan to

reorganize (18T39, 18T81-18T82, 18T96). Hosford recalled receiving literature during the CWA campaign from the administration, e.g., what could and could not be done and “not to interfere with the process” (18T82). He had no knowledge of Warshaver’s participation in any focus or advisory group. Hosford was not a member of these groups (18T83).

Other Newark Campus Reorganizations

195. This was not the first reorganization on the Newark campus or in FASN. Reorganizations occurred periodically resulting in the elimination of positions (12T91-12T92, 16T56-16T64). For instance, in 1985, there was a University-wide reorganization which affected Chepich; she became manager of special accounts (12T92). In the early 1990's, there was also a reorganization combining the music, theater and arts departments which created the department of visual and performing arts under one department chair (12T92, 16T57). This reorganization resulted in the demotion of one secretary, the promotion of another and the elimination of two professional positions (16T58, 16T63).

Also, in 1993/1994, there was a reorganization involving the psychology department and the institute for animal behavior which resulted in the elimination of a secretarial position held by a long term employee (12T93, 16T58-16T60). Then in 1994/1995, Jonakait, who was chair of the department of biological sciences, downgraded a high ranking administrator to create a departmental administrator position to oversee the business affairs, the laboratories and the graduate and undergraduate programs (16T60-16T61).

Then in 1997, there was a reorganization involving the philosophy department, the education department and the classical and modern languages departments resulting in creating a departmental

administrator position and eliminating a secretarial position (12T93-12T94, 16T61-62). Also in that year, the office of personnel eliminated the position of assistant director whose duties were assumed by the associate provost (16T64).

June 26, 1997 Hosford/Chepitch Meeting

196. On June 26, 1997, Chepitch interviewed with the Newark provost's office for the budget and facilities planning associate position, a higher range position than her business manager title (R-82, 10T137-10T138, 11T6, 13T15). When she returned to her office, she learned for the first time that her office was being reorganized and her position was being eliminated (10T138, 18T74). Hosford gave her a letter and met with her at 4 p.m. to convey this information and explained that she could stay as interim manager of IDR resources for FASN during the transition period from June 30, 1997 through January 6, 1998, or until she secured another position at the University (R-67, 10T138, 12T5, 18T74). Hosford told her the office needed someone who could do computer programming and information systems as well as budget and accounting (10T138). The new position required the ability to write and evaluate computer programs and systems (10T140).

In the letter, Hosford described the reasons for the reorganization:

At present, you, Gary Roth and, in some special situations, Gerald Warshaver are all involved in managing and monitoring aspects of the FASN budgets. It is not an efficient arrangement, nor is it one that provides the quality of financial planning and resource management necessary for the institution in a period of significant change. As a consequence, I have decided to reorganize job functions and staffing in the office to permit creation of the equivalent of a "vice-president of finance" to better assist the dean in the areas of resource planning, fiscal management, and development of the information systems necessary to support these functions. [R-67]

The letter also informed Chepitch that her position and Roth's position were being eliminated and a new position combining their job functions and adding others was being created -- associate dean for resources and systems (R-67). A job description of the new position was attached to the letter (R-67).

Chepitch was shocked and dismayed about losing her job (18T75).

197. At the meeting, Chepitch told Hosford she wanted to apply for the new position (10T138, 18T103). Hosford felt Chepitch did not have the necessary skills for the new position, but he did not tell her that at the meeting (18T76). Chepitch had no skills in writing computer programs or evaluating computer systems, skills required for the new position (10T139, 12T22).

Chepitch felt that her computer skills were adequate and meeting the requirements of the office, although the skills she had ". . . needed to be expanded and improved in order to keep up with current technology" (12T21). According to Chepitch, she had attempted to stay current with respect to computer programs and databases, e.g., Chepitch could use Lotus 123 work sheets (13T149), but by the mid-1990's she was still using ledger paper and completed work sheets by hand rather than by computer (13T149-13T150).

Chepitch contends that if Hosford needed her to have greater computer skills, he should have told her before the decision was made to reorganize and sent her for training (12T21). Chepitch testified that she learned for the first time in 1996 that her computer skills needed improvement (13T83). I do not credit that testimony. Chepitch testified that throughout her career she continuously asked for training to upgrade her computer skills which suggests to me that she was aware prior to 1996 that this was an area which needed improvement (10T116). Also, in her 1985 performance

appraisal, while she was business manager of University College,^{53/} her supervisor suggested that Chepitch “. . . seek more training in the use of computers for record keeping . . . ” (R-104).

Additionally in 1987, while she was acting business manager at the FASN, her supervisor commented in her performance appraisal that “[c]omputerization of records here remains a task to be carried out, but Ms. Chepitch’s determination to learn personal computer operations (for the first time in her career) and her growing familiarity with these leads me to believe this will be thoroughly accomplished over the coming year” (R-103).

Computer skills were a specific and continuing concern during her career as FASN business manager and were identified by both herself and her supervisors as an area that required attention and improvement (R-103, R-104, 13T86-13T87, 13T95-13T96, 18T69-18T70). (See also subsection above titled Chepitch Job Training Opportunities for further discussion regarding computer training, findings of fact nos. 169-170).

Chepitch felt she was qualified candidate for the new position because she brought 30 years of experience in accounting and budgeting and knew the University’s rules and regulations. She felt that the job was 90 percent of what she was already doing as business manager (11T10-11T11, 13T127). Chepitch also felt she exceeded the minimum educational requirements for the position because she received her M.B.A. in the area of management (10T112, 11T11). Chepitch graduated from her M.B.A. program with honors (13T97).

The job description, however, required that the associate dean for resources and systems be

^{53/} University College was the evening division which in 1985 was combined with the College of Arts and Sciences and became FASN (10T111)

responsible for “the performance, configuration and design of FASN-specific financial and information computing systems. . .” (R-68). Although Chepitch designed existing computer programs to fit her needs, she did not know computer language nor could she design a new computer program (12T18, 13T126). She also had no experience in connecting the various FASN departments utilizing laptops, modems and network technology which was expected in the new position (R-68, 12T37-12T39). Chepitch held various business officer positions in her career at Rutgers and was never required to perform computer programming in any of the positions because those functions were either performed by the University’s computer department or outside consultants were hired (13T131-13T132, 13T134).

Associate Dean for Resources and Systems

198. On September 1, 1997, Chepitch applied for the newly created position of associate dean for resources and systems at FASN (11T111, 12T15, 13T126). The position was posted in July 1997. Personnel notified her of the posting in July but by the time Chepitch applied on September 1, 1997, the search had been underway for a couple of months and was in the final stages (R-65, R-68, R-69, 12T15). Chepitch was not given an interview nor was she selected for this position (10T139, 11T7, 11T111, 13T126).

On September 23, 1997, Hosford notified Chepitch that she was not selected (R-70, 12T23).

He wrote:

In my letter to you of June 25, 1997, informing you of my intention to reorganize job functions and staffing in the FASN Dean’s office, I noted that a search would be conducted to fill the new position of Associate Dean for Resources and Systems. An offer of that position has now been made and accepted, and the new Associate Dean will

start work the week of September 29th. Consequently, with the understanding that this will include any unused and accrued vacation time, I am writing to release you forthwith from the obligation to report to work until your term of employment ends on January 6, 1998, or you resign to take another job, which ever comes first. Please arrange to remove all your personal effects from your office by Friday, September 26, 1997. To assist you in your efforts to secure another position, you may continue to reference this office for mail and telephone messages. Mail addressed to you will be forwarded promptly to your home address, and you can remotely access telephone messages via the voice mail system. [R-70]

199. Richard DaSilva, an outside candidate, responded to a newspaper advertisement for the new position of associate dean for resources and systems and enclosed his resume setting forth his educational and professional background. He applied for the position in July when it was posted. DaSilva held a B.A. in music from Rutgers and was in the process of writing his masters thesis in management information systems for Stevens Institute of Technology. Additionally, since 1986 he worked for the Hertz Corporation as manager of properties and facilities information systems with responsibility for all information system issues in the United States and Europe including designing and overseeing various computer programs used by the Hertz Corporation (CP-70).

Warshaver checked DaSilva's references and notified Hosford and Jonakait of his findings by memorandum dated September 3, 1997 (CP-70, R-111, 16T3-16T4). The references confirmed DaSilva's extensive experience in developing computer tracking and information systems and praised his ability to work with both technical and non-technical staff (CP-70). Additionally, DaSilva had "excellent knowledge of Visual Basic, HTML, Word Perfect, Word, Lotus 123, Excel, Access, dBase, Foxpro, Reach Out, Procomm Plus, Lotus cc:Mail, HP Openmail" and had connected the various

departments utilizing laptops, modems and network technology in his job at the Hertz Corporation (CP-70, 12T37-12T39). DaSilva, unlike Chepitch, had written system and user manuals (CP-70, 12T39).

Warshaver, Jonakait and Hosford supported his candidacy to Provost Samuels. On September 12, 1997, DaSilva was offered the job. Hosford told DaSilva that if he accepted the position his start date would be on or about September 29, 1997 (CP-70, 15T122, 18T90). Hosford also informed DaSilva that his position was T-coded with a beginning salary of \$67,500. The salary for the new position was \$12,000 more than Chepitch was receiving as business manager (11T103). Hosford and Jonakait recommended the salary “[b]ecause he comes from industry and comes with plenty of relevant experience . . . is unlikely . . . to accept the position without a salary that exceeds that of the Range 29 that is designated” (CP-70). DaSilva’s appointment started at the end of September and his performance was to be reviewed yearly by Jonakait and Hosford (15T61-15T62, CP-70).

DaSilva took the position offered by Hosford (11T11). In his first year at FASN, he worked with Associate Dean Jonakait (15T85, 15T125, 16T54).

DaSilva’s Job Performance

200. During the year DaSilva worked with Jonakait he implemented a multi-year projection budget and began designing a computer program to track part-time lecturers (PTL). The programs saved the dean’s office approximately \$105,000 (15T125, 15T130, 16T145-16T146). Although the PTL program was not fully implemented until DaSilva’s successor, Bernestine Little, completed it, DaSilva was responsible for beginning the process (16T138-16T139, 16T145). Little completed the process by creating multi-year projections for PTL’s (16T145).

When DaSilva was hired, Roth and Bob Kerr, a business manager in the department of

biological sciences, with the assistance of Chepitch were in the process purchasing servers, establishing initial protocols and providing training for a software program called grant manager. The program was designed to track University budgets and grant budgets (15T124, 16T128-16T129, 18T72-18T73, 21T44-21T45, 21T70-21T71). When Jonakait left the FASN, although the program was not fully implemented by DaSilva, she had a great deal of the data that she needed (15T128).

There were no computer networking systems developed or used by Chepitch during her tenure as business manager (16T146).

Chepitch contends that in DaSilva's first year in his position he ran a deficit of \$250,000 and that the computer programs he was supposed to write and implement were not done (11T12, 11T102). Chepitch contends that she learned of DaSilva's job performance from contacts at the University (11T12, 12T40). On cross examination, however, Chepitch refused to name the individuals who gave her the information on DaSilva's job performance (12T41) .

Unlike Jonakait, Chepitch has no first hand personal knowledge of DaSilva's job performance; she had left the FASN as of September 23, 1997, before DaSilva even started there. Her contentions, based on information given to her by unnamed sources at the University, are not reliable or credited here.

201. When Dean Hosford retired in 1998 and Dean Diner was appointed as his successor, Jonakait and Warshaver discussed preparing a briefing for Diner, laying out the FASN resources. This was intended to assist Diner in his meeting with the provost to lobby for more resources (16T54). DaSilva prepared the briefing (16T54-16T55). It provided a comprehensive accounting of all FASN resources (16T55). According to Warshaver, Jonakait and Tiger had tried get this type of document

from Chepitch (16T55).

202. DaSilva remained in the FASN job for approximately two years then transferred laterally to the office of the dean of student affairs when an associate dean retired (11T11, 16T51). At that time, the office of student affairs was experiencing problems with its computer network and information systems, particularly in regard transfer student credits (16T51-16T53). Because transfer credit evaluations were being done by hand, the University was losing applicants to other schools when they did not hear from Rutgers promptly as to what, if any, credit they would be given for previously completed course work (16T52-16T53). It was felt that DaSilva could computerize this system having already demonstrated his expertise at FASN (16T51).

203. During the 1998/1999 academic year, Bernestine Little replaced DaSilva (15T131, 16T144-16T145). She was hired by Dean Diner who had been appointed in the summer of 1998 (15T136, 16T144). Her title was a manager's title below range 29. It is not clear from the record what her specific title was, but she was not hired as associate dean for resources and systems which was a range 29 position (11T104, 13T133, 16T130-16T132). Warshaver was involved with drafting Little's job description. There were some functions which DaSilva had previously performed as associate dean for resources and systems but which were not required of Little (13T133-13T134, 16T133). DaSilva was still working in FASN (within the office of student affairs), therefore, he was still available to do computer networking across the departments (16T133). That responsibility was taken out of Little's position. She was expected to be responsible for maintaining and improving the systems which were already in place (16T134, 16T145).

Efforts Made by the Personnel Office to Place Chepitch in Other Jobs

204. The division of personnel services handled job placement assistance for employees.

David Waldman was associate director of the division of personnel services and reported to Director of Personnel Steven Otzenberger who reported in turn to Vice-President Norman (11T17-11T18).^{54/} Waldman knew of the CWA campaign and was aware of the University's "Vote No" stance (11T19-11T20). After the 1995 CWA election, Waldman assisted Richard Norman with the advisory group (11T23).

Waldman knew Chepitch, D'Arcy and Tarter as long term employees and through their activities in the Assembly (11T25-11T26). Additionally, he was aware of their involvement in the organizing campaign, although he was not aware of the second CWA organizing effort (RAPSS) which ended in the summer of 1996 (11T24, 11T26). Waldman had no knowledge of any union activity on the part of Randolph (11T26, 11T60).

Waldman had no role in the reorganization of the FASN and never spoke to Hosford about his reasons for reorganizing the office or about Chepitch's role in the CWA campaign (11T66). He was, however, aware of Jim Venner's, a senior personnel generalist, efforts on behalf of Chepitch. Waldman received reports from Venner, as he did from the rest of the staff in the course of their activities in assisting other employees in similar.

Waldman knew that Venner was providing counseling to Chepitch and some support in identifying candidacies she might be interested in (11T48-11T49, 11T67, 11T85, 11T87). After Chepitch received notification that her job was eliminated, she contacted Newark Director of Personnel

^{54/} Waldman substituted on one or two occasions at the Assembly in Otzenberger's absence but had very little contact with the Assembly otherwise (11T18-11T19, 11T62).

Geraldine Brooks, who sent Chepitch to Venner (11T67, 11T114). Venner worked with Chepitch from the time of her lay off until she left Rutgers in 1998 (11T73). He spent a considerable amount of time with her (11T67, 11T71)

In Waldman's opinion, the assistance provided to Chepitch from the division of personnel was similar to, if not greater than, other employees at the University in similar circumstances because Chepitch demanded more services (11T48-11T49, 11T66, 11T75, 11T83).

205. In a July 1997 e-mail to Waldman, Venner described a two-hour meeting with Chepitch and summarized the discussion about the services which personnel would provide her, e.g., provide job descriptions, assist in resume development, alert her to postings but explained that Chepitch must also take responsibility for identifying positions, contact hiring authority about her candidacy, request interviews and follow-up to obtain feedback (R-65, 11T71, 11T116). At the meeting, Chepitch explained that she would only consider lateral promotional opportunities despite Venner's explanation of the practical problems of waiting for these higher range positions (R-65).

In the July e-mail, Venner also reported to Waldman that he e-mailed Chepitch to alert her to the posting of the associate dean for resources and systems position which was going to be announced the following week and offered to share job description information with her, but Chepitch did not respond even though she had expressed an interest in the position (R-65, 11T95).

206. Venner also worked with the various departments to get Chepitch interviews but the departments scheduled their own interviews (11T68). After the interviews, Chepitch was asked for feedback in order to help her work on her interview style (11T69). In general, personnel rarely got feedback from departments after an interview and could not compel the departments to respond to their

inquiries about a candidate (11T68-11T70). Similarly, personnel got little departmental feedback on Chepitch after her interviews but this situation was not unique to her job candidacies (11T68-11T70).

In September 1997, Venner sent an e-mail to Assistant Director of Personnel Services Pat McFadzean with a copy to Waldman and Otzenberger giving an update on his efforts to assist Chepitch (R-66, 11T72-11T73). Staff reports routinely went to McFadzean as well as to Waldman and Otzenberger (11T84-11T85, 11T87). Also, since Chepitch stopped by frequently, it was important for Waldman and Otzenberger to know what was going on with her search (11T87).

In his report Venner noted that Chepitch was going to be interviewed for the director of business services position. He also wrote that the chemistry department administrator position had been filled but noted that Chepitch applied despite the requirement of basic knowledge in engineering or physical sciences. He then reported that the associate dean for resources and systems position was going to be filled with an external candidate.

The report ended with a section titled "confidential" reporting that Chepitch circulated her resume to individuals on campus and that she had been offered an operations manager position with Catholic Charities on Staten Island but had turned it down. It concluded with "Let me know if you need anything further" (R-66). Reporting the possibility of an individual finding employment outside of Rutgers might affect the amount of resources put into their search at the University (11T86-11T87). It was a routine communication in staff reports. Venner usually asked if they needed any more information (11T87).

Chepitch Job Applications

Between 1995 when the CWA campaign began and 1997, Chepitch applied for 16 positions at

the University; 14 applications were filed in 1997 alone (11T105).^{55/}

Chronologically, the positions are as follows (See also subsection above titled Associate Dean for Resources and Systems for discussion of a position Chepitch applied for in September 1997, findings of fact nos. 198-199).

207. In late 1996 and early 1997, before she learned her position was being eliminated, Chepitch applied for the position of assistant director for budget and finance in the physical plant department on the Newark campus (R-76, 11T107, 12T119, 13T87, 13T102). Chepitch felt she was qualified for the position because of her years of experience in budget and finance (11T107).

Chepitch was interviewed by a committee as well as Director of Physical Plant Don Little and Associate Provost John Vincenti (11T107, 12T122-12T125). On the committee were Diane Gravatt (chair of the committee), Jeff Wilson, Marie Melito, and Steve Chall (R-105, 12T123, 13T83). Warshaver was also on the committee but did not interview her because he thought it would be a conflict of interest since she worked at the FASN with him (13T114, 14T8). He did interview the other candidates (14T8, 14T40).

During the interview Chepitch was told that in addition to the requirements listed in the posting it would be beneficial if the candidate had some experience in construction (13T107). Chepitch told the

^{55/} Rutgers objected to the admission of testimony related to events occurring more than six months preceding the filing of the charge, including testimony related to positions applied for which fell outside the statute of limitations. On February 14, 2000, I ruled that while a violation could not be based on positions for which she applied prior to June 1, 1997, evidence of possible discriminatory motivation and harassment leading to the elimination of her position as business manager and the alleged subsequent failure of Rutgers to interview or offer her other positions was admissible.

committee she had experience in construction and/or renovation projects because of work in the provost's office and later at the FASN (13T107).^{56/}

According to Chepitch, after the committee interview, Pat Brancato, the department's human resources manager, telephoned her to tell her that she knew she had done very well with the committee and that she was their number one choice (13T116). Chepitch contends Brancato told her to expect to get a call from Little for a second interview and that she had everyone's support (13T116). Except to the extent that Little and Vincenti subsequently called and interviewed her, I do not credit Chepitch's contention that Brancato told her she was the committee's number one choice. It is rebutted by the testimony of the committee members which I credit (13T116-13T117). Brancato did not testify.

In January 1997, she was notified by Brancato in writing that she had not received the position (11T107-11T108, 12T125-12T126, 13T109). The successful candidate was Heidi Szymanski (12T126, 13T87). Szymanski worked for the City of Newark and was involved in major construction projects for the City (13T150-13T151).

At a luncheon meeting, Chepitch spoke to Vincenti about why she was not selected (12T127, 13T117-13T118). According to Chepitch, Vincenti told her that the department was willing to take a chance on an outside candidate with no budget or finance experience in a University system (12T127,

^{56/} In the provost's office, Chepitch, together with her supervisor, was liaison with the clerk who was responsible for ensuring that the contractors were properly performing their jobs during the construction of the Newark campus (13T108). In the FASN Chepitch moved the accounting and business department into newly renovated space and was involved with all aspects of the move including the interior design, the telephones, wiring for computers, painting, rugs, etc. (13T108). Chepitch also dealt with the vendors to ensure that the project was within budget limits (13T108). If the University decided changes were needed, Chepitch's responsibility was to implement the changes (13T109).

13T117-13T118). Vincenti did not testify. I do not credit the comments Chepitch attributes to Vincenti about the successful candidate. Chepitch never had a conversation with Little about her non-selection (12T128).

Chepitch also spoke to different members of the interview committee after she was not selected (12T128). The conversations took place when Chepitch bumped into them or in her every day dealings with them (12T129-12T131, 13T116). There is a dispute over the substance of these conversations.

According to Chepitch, Gravatt, Wilson and Melito, all indicated that she was the committee's number one choice (13T115). Chepitch contends that she was told by them that she was the number one candidate of everyone on the committee and they did not know why someone else was selected (11T107-11T108, 12T128-12T129, 13T115).

Gravatt, Melito and Wilson all testified. They each denied telling Chepitch she was the committee's number one candidate for the job. I credit their testimony. They were sequestered; their explanations of the interview process and committee actions were consistent; and the staff recruitment summary sheet for the position supports their testimony (R-105).

Wilson first met Chepitch in the 1970's, but only had regular contact with her when he became the facilities and planning associate in the Newark provost's office and Chepitch was FASN business manager (14T13-14T14, 14T32). Wilson held the position of facilities and planning associate from 1988 to 1998. Chepitch was also a candidate for the position in 1988, but Wilson got the job (14T25).

Wilson did not discuss Chepitch's candidacy for the position of assistant director for budget

and finance with her after her interview or tell her she was the top candidate because he considered that information confidential, and the committee did not rank the qualified candidates (14T14, 14T23).

According to Wilson, the committee interviewed candidates and discussed them amongst themselves (4T9). The subject of Chepitch's union activities never came up either during the interview or afterwards during deliberations in connection with her candidacy (14T22). Each committee member had different opinions as to which candidate would be their own first, second or third choice, but the committee only selected the top three or four candidates to pass on to Little for further consideration (14T10-14T11, 14T16). All the recommended candidates were qualified (14T16).

Although the candidates for the next round of interviews were not ranked by the committee, and Chepitch was Wilson's number one choice because he had a strong preference for internal candidates and felt that Chepitch was familiar with the Rutgers systems and knew the players in Newark, he never told her so (14T17, 14T35). This was not the first time Wilson's number one preference did not get the job. In the fall of 1995 Wilson was on the interview committee for the director of business services when Chepitch applied for the job (R-73, 14T18-14T22). Although Chepitch was also his number one choice in that instance, she was not one of the top four candidates recommended for the job (14T19). Wilson explained why Chepitch was not one of the top four candidates in 1995:

A. . . . there were two main reasons.

Number one, it involved a lot of student accounts and cashiering work. And Jane was more on the accounting side of the house, in terms of what she did. So she really didn't have the qualifications.

And we also had some – or I shouldn't say "we", I had some reservations of Jane having that position because at times Jane would be abrasive.

And I felt that she was not a good candidate to be involved in the subtle dealings that were needed to have going back and forth between our campus and the central administration.

Q. What do you mean by abrasive?

A. Well, Jane really didn't like to take no for an answer or hear that something was against regulation.

If she thought something was wrong or unfair, she was kind of like a pit bull. She would sink her teeth in and not want to let go, you know, even if it was something that was fairly minor.

And basically my response to her several times was "Jane, I can go and fight this with New Brunswick for you, but I would rather – if I have chips to use up down there, I would rather use my chips on a hundred-thousand dollar problem, than a ten dollar problem. This is something we've got to live with".

Q. Did that concern of your's prompt you to consider whether she could exercise good judgment?

A. I don't think there is a judgment problem with Jane, no.

Just that sometimes she got carried away with things. [14T20-14T21]

According to Wilson, however, the committee did not consider Chepitch's attitude a problem in considering her for the physical plant job because "[i]t was basically pretty much all single campus dealings, everybody up on the Newark camps was familiar with Jane. And, you know, we knew enough of Jane's personality not to get rubbed the wrong way when she went off on a tangent" (14T21, 14T33).

Wilson had a 20-minute discussion with Chepitch after one of her other unsuccessful job applications. She was upset and asked him what she was doing wrong, what was there about her skills that stood in the way of her advancement at the University (14T29, 14T34). He told her to keep on trying but one thing he did see as a draw-back was her reputation for abrasiveness (14T29). Wilson had observed this trait first hand between 1988 and 1998 when he co-chaired the monthly business meetings of the dozen business managers on the Newark campus (14T27). During these meetings, she occasionally displayed her abrasiveness (14T27). At no time, however, during the 20-minute conversation did Chepitch raise the issue of her union activities nor did it occur to Wilson that her union activities were an issue in applying for the jobs (14T29-14T30). According to Wilson, everyone knew where Chepitch stood in terms of supporting the union, but it was a non-issue in her job searches (14T30).

Wilson was not surprised when Chepitch did not get the physical plant job because ultimately the choice was made by the person the candidate was going to work for (Little), not the interview committee, and they had their own criteria which might be different from his (14T36).

Marie Melito is associate dean for budget and administration for the law school in Newark and has been with the University for 33 years (14T38). Melito knew Chepitch from the time she became business manager for the law school in 1991 (40T43). They attended business manager meetings together (40T93). Melito was also one of five committee members in the selection process for the assistant director of budget and finance in the physical plant department on the Newark campus (R-105, 14T39). It was the first time she had served on an interview committee (14T44).

According to Melito, the committee interviewed all the candidates and recommended three for

interview by Little without ranking them. The committee, however, was very enthusiastic about Heidi Szymanski's candidacy (14T42). At no time during the deliberations or discussions among committee members did the subject of Chepitch's union activities arise (14T53).

Szymanski was Melito's number one choice because she had a strong financial background and strong interpersonal skills (14T47). Although Melito felt that Chepitch was qualified and would not have had a problem if she had been appointed to the physical plant job, she felt Szymanski was by far the best candidate (14T48). Melito had observed Chepitch during business manager meetings and found her to be defensive and argumentative about University policies and procedures, turning the meetings into gripe sessions (14T49). Melito stopped attending, because they had turned into gripe sessions (14T50). Neither Melito nor any of the committee members, however, raised any concerns about Chepitch's meeting style during their discussions (14T54).

According to Melito, Chepitch called her after she did not get the job and asked what she did wrong during the interview (14T43). Melito explained to her that she did nothing wrong. She did not tell Chepitch that she was the committee's number one choice (14T44, 14T47).

Melito subsequently recommended Chepitch for a job outside the University as business manager for Sisters of St. John the Baptist on Staten island because the job required someone who would work independently and she felt Chepitch would be perfect for the position (14T52). Chepitch was offered the job but did not take it (14T53).

Like Melito, Dianne Gravatt, chair of the interview committee, received a telephone call from Chepitch asking why she did not get the job. Gravatt did not tell Chepitch that she was the committee's number one choice (14T63). According to Gravatt, the committee interviewed eight

candidates. Each committee member scored the candidates they interviewed on a scale of one to five for each question. At the end of the interviews, the scores were totaled and the top three candidates were recommended to Director Little for interview (14T61). The three candidates were not ranked, although Gravatt's first choice was Szymanski (14T62-14T63). At no time in the committee discussions did the subject of Chepitch's union activities come up (14T68). Gravatt told Chepitch that she did not know why Chepitch was not selected but that her name was forwarded to Director Little and Dean Vincenti for interview and she needed to speak to them for the reason why she was not selected (14T63).

Also, like Melito, Gravatt had an experience with Chepitch at a business managers meeting where Chepitch verbally "attacked" her for about 25 minutes because a new process was being put into place involving the "key shop" and Chepitch was not a "happy customer" (14T67-14T68). Gravatt never expressed concerns over Chepitch's attitude in the committee deliberations nor was it raised by anyone else (14T69). Gravatt felt Chepitch was qualified and recommended to be interviewed with two other candidates (14T69).

Based on the foregoing, I find that Chepitch was not the committee's unanimous number one choice. There were five committee members and, at least two, Melito and Gravatt, selected Szymanski as their number one choice. Warshaver did not interview Chepitch because of a possible conflict. Therefore, only Wilson selected Chepitch as his number one choice. Even if the fifth committee member had scored Chepitch as his/her first choice, it would not have constituted a majority. Additionally, I find that the top three candidates were recommended to Little and Vincenti for interview without ranking. I credit Wilson, Melito and Gravatt's testimony that they forwarded the top three

candidates names without raking to Little and Vincenti and did not tell Chepitch that she was the committee's number one choice. In particular, Wilson who recommended Chepitch as his first choice gave a very plausible explanation for not telling Chepitch she was the committee's number one choice, he considered the committee deliberations confidential and the committee did not rank the top three candidates sent on for further interviews. As to Gravatt and Melito, since Chepitch was not their number one choice, there would be no reason for them to tell Chepitch she was the committee's choice.

Finally, whether Chepitch was the number one choice of the committee or not is irrelevant because the interview process required the committee to forward the top three candidates for interview and selection by Director Little and Dean Vincenti. There is no question that Heidi Szymanski was one of the top three candidates and that all three candidates were qualified for the position. Also, Little and Vincenti were the final decision makers not the committee.

The staff recruitment summary sheet (R-105) is a form completed after the search is finished and an individual is hired (13T88). On that form the committee unanimously recommended the "successful applicant" Heidi Szymanski (R-105, 13T88, 14T40). The form reflected the candidate chosen by Little from the three candidates recommended by the committee for interview (14T40).

208. In January 1997, Chepitch applied for the position of Vice-President Norman's executive associate (R-77, 11T108, 12T135). In 1992, she had unsuccessfully applied for this same position (11T108).

The job posting described the position as :

Reporting to the Vice-President for Administration and Associate

Treasurer, provides executive staff support and assistance on administrative matters pertaining to the development, implementation and management of policies, programs and operations in the following key areas: Human Resource systems, financial systems, construction code, environmental health and safety, campus planning and other areas [R-77]

Chepitch was not interviewed, but sometime in March 1997, Norman called her about her most recent application and told her that although she was qualified, he had chosen someone else because he was taking a different approach to the job (11T108, 12T136, 12T142, 13T90). Chepitch assumed that Norman was looking for someone with different resources to bring to the job because the person who got the job was from the University's auditing department (12T137). Chepitch had no experience in auditing nor was she in charge of construction code matters at the FASN which was included in the postings job description (12T137). In her January 17, 1997 letter to Venner applying for the executive associate position, Chepitch acknowledged her inexperience noting that she had ". . . been involved with campus planning, construction of facilities, personnel administration, and affirmative action. I know the right person to call to gather information and the people who would be willing to teach me anything I might need to know" (R-78). Although she had responsibility for environmental, health and safety issues as well as campus planning, she was not in charge in these areas (12T138-12T139). The provost and associate provost together with three or four others were in charge of campus planning (12T138).

209. Next, Chepitch applied for the position of associate dean for administration in the college of nursing on the Newark campus (R-79, 11T108, 12T143). Chepitch felt she met the qualifications in the areas of budget and finance and general knowledge of the working environment including

registration and scheduling (11T108). The job posting required an M.B.A. or equivalent with related experience. A Ph.D. degree in nursing was desirable (R-79). Chepitch had an M.B.A., but no training in nursing (10T112, 12T146).

The position also preferred familiarity with word processing and spreadsheet programs (R-79).

At the time that Chepitch applied for this job, she had received some basic and intermediate word processing training and was familiar with one financial spreadsheet program -- Lotus (12T143-12T144).

Chepitch was interviewed by Nursing School Dean Hurdis Griffith but in late February or early March 1997 received a telephone call from Griffith explaining that she was an excellent candidate but an outside candidate who had been laid off by one of the Newark hospitals and had a background in nursing was being hired (11T108, 12T147-12T148, 13T90). Chepitch had no other conversations with anyone at the college of nursing as to why she was not selected (12T148).

210. In March of 1997, Chepitch applied for the position of assistant dean/associate director AFC/EOF for the Academic Foundation Center on the Newark campus (R-80, 11T108, 12T149). The job posting required an advanced degree in counseling, education, social work, or related field and approximately five years of related experience including working with urban under-prepared students. A Ph.D., Ed.D. or J.D. with education experience was preferred. Bilingual Spanish was desirable (R-80)

Chepitch met none of the advanced degree requirements and had no experience with under-prepared urban students or bi-lingual Spanish skills (12T150-12T151). Chepitch felt she met the education requirements because she equated her experience being at the University and her M.B.A.

with the education requirement (12T151-12T152).

Chepitch was told during her interview that the position required some kind of legal background (11T108). An outside candidate who possessed a Ph.D in educational psychology and a masters in counseling as well as being bi-lingual in Spanish was hired (11T109, 18T46).

211. In the spring of 1997 Chepitch applied for the position of departmental administrator in the department of physics and astronomy on the Busch campus in New Brunswick (R-71, 11T109, 12T44-12T45, 12T51). In April 1997, she was interviewed by Department Chair Dr. Paul L. Leath, and an interview committee (11T109, 12T50). Chepitch contends she was informed that she was one of the top three candidates, but in May 1997 received a letter that she did not receive the position (11T109, 12T48, 13T91). No one on the interview committee testified nor was there any other independent corroboration to support Chepitch's contention she was one of the top three candidates.

Chepitch felt she was overqualified for the position (11T109). However, besides a bachelor's degree, preferably in business administration, the job posting required extensive administrative experience, preferably in a scientific research or academic environment (R-71). Chepitch concluded that she had some knowledge in the scientific area "... since I was working with the sciences at arts and sciences ..." (12T47-12T48). The posting also required a proficiency in micro-computing and database management (R-71). Chepitch had no advance knowledge in micro-computing and database management (12T48). Based on the job posting and Chepitch's testimony about her own experience, she was not "overqualified" for the position of departmental administrator in the department of physics and astronomy.

There is a dispute about the substance of a conversation between Chepitch and Professor

Clement Price, her faculty reference for the job. Chepitch testified that Price telephoned her to let her know that he had been contacted by Dr. Leath (12T44). According to Chepitch, Price told her “Jane, you’re really blacklisted at the University” (11T109, 11T114, 12T44-12T45). Chepitch felt that Price’s statement was not based on anything Leath had said to him but on all of the positions to date that Chepitch had unsuccessfully applied for (12T45). Professor Price denied telling Chepitch that she had been blacklisted (15T11). His testimony follows:

Q. Did you say to Ms. Chepitch that she had been blacklisted at the University?

A. No.

Q. Did you say to her that she had been blackballed?

A. No.

Q. Are you sure?

A. Absolutely.

Q. Why are you so sure?

A. Well, I – I don’t have any knowledge of the University having a blacklist.

Nor am I aware of a university, such as Rutgers, behaving like a fraternity.

Secondly, and more importantly, those are racially charged words. And I’m a student of race relations and American history, including Afro-American history. And I don’t use language like that. [15T11]

Professor Price, a 30-year faculty member and tenured professor of history at the University, testified that in May 1997 he was contacted by Dr. Leath as a reference listed by Chepitch for the

departmental administrator job (15T4, 15T7). Price told Leath that in his experience Chepitch was an exemplary member of the staff, helpful to faculty members in raising money or mounting public programs (15T8). Price also indicated that “Jane was a very tough administrator, that she had mastered the complexity of the Rutgers bureaucracy, and that she was especially helpful to faculty” (15T9). Leath never asked about nor did Price discuss Chepitch’s union activities (15T9). Price was not aware of any union activities in which Chepitch was engaged (15T7).

Price then telephoned Chepitch to let her know that he had received a call from Leath. Price informed her that his impression was that Chepitch was a serious candidate for the position, not based on anything that Leath said, but because in Price’s opinion, when a reference is contacted it usually means a serious candidacy (15T10, 15T39-15T40).

I credit Price’s denial that he ever made the statements attributed to him by Chepitch. As a witness, he was inclined to be supportive of Chepitch’s testimony. He was listed as a job reference by Chepitch and gave her positive recommendations for her job skills noting in particular her assistance to him (15T9,15T13). Additionally, Price recommended Chepitch for a job at the Newark Museum in a position requiring the skills that Chepitch had as a fiscal manager (15T13). Price’s wife was a director at the museum, but once recommending her, Price stayed out of the selection process (15T13). Chepitch was interviewed but not offered the job (15T13).

Another reason that Price was not likely to tell Chepitch that she was being blacklisted because of her union activities was that when he heard that Chepitch’s position in the dean’s office was eliminated, he spoke to Dean Hosford at the urging of his secretaries who were close to Chepitch (15T12, 15T14-15T15). Price learned that Chepitch applied for other positions at the University

because Chepitch was very close with his secretaries (15T12).

Hosford told Price that the FASN dean's office was being reorganized commensurate with the need for advanced computer technology, particularly with respect to financial matters, and that Chepitch's computer skills were not sufficient and she seemed unwilling to acquire them (15T15-15T16, 15T37). Hosford did not discuss Chepitch's union activity nor did Price have any reason to doubt Hosford's explanation because the University was becoming increasingly computerized and the person who was brought in to replace Chepitch had advanced computer skills (15T16, 15T19, 15T22).

Additionally, Price observed that with the new demand for computerization even some employees with higher education degrees did not have an interest in taking on computer skills (15T19). Specifically, Price was not surprised when Hosford expressed to him that Chepitch seemed to be unwilling to acquire the necessary computer skills because "[K]nowing Jane Chepitch as I do, if she didn't want to acquire skills she would not" (15T21). Price observed that after Chepitch left the FASN, the business office began to fast track the use of computers and e-mail and procedures between faculty staff and the business office changed (15T23).

Having accepted Hosford's explanation for the changes in the business office which triggered the elimination of Chepitch's position, Price would not be inclined to give Chepitch the impression that the University was blackballing her because of union activities. Moreover, although Price shared Chepitch's frustration with losing her position and was saddened by it, he did not view Chepitch's situation as unusual within the context of the constant shuffling of secretaries, administrative assistants and "people at Jane Chepitch's status" nor did her failure to get the position in Leath's department

surprise him because of the competitive nature of jobs at the University (15T31, 15T35, 15T40-15T41).

I also credit Price's recollection of the conversation because Price gave a highly credible reason for not having made the statements or for using the specific language attributed to him; as an African-American historian, the words "black" and "blacklisting" carry negative racial connotations which he is careful to avoid unless apropos (15T11, 15T27-15T28). He did not consider the usage in a conversation with Chepitch apropos because he had no knowledge of the University maintaining a "blacklist" (15T11).

Finally, I credit his testimony that he had no knowledge of Chepitch's union activities. Therefore, he would have no reason to conclude that she was being blacklisted because of them. As a long-time faculty member and tenured professor, there is no reason to believe that he would not testify truthfully; he would have no reason to fear retribution from the University if he admitted telling Chepitch that the University was blacklisting her.

212. Chepitch applied for a position as budget and facilities planning associate in the Newark provost's office which was posted in May 1997 (R-82, 11T110, 13T15).

Chepitch contends that since she had held this job previously under another title (business officer) with different responsibilities, she was qualified for the new posting (11T110, 13T154). Also, she felt that since the incumbent in the position had called her to suggest she apply for the job, he knew that she could do the job (13T111-13T112). Specifically, she felt that one of the requisites for the budget and facilities planning associate position was "extensive experience in analysis and reporting of program, budgeting, or statistical information" which was what her previous work experience in the

provost's office involved (R-82, 13T111). Chepitch also testified, however, that when she worked in the provost's office between 1974 and 1980, she held the positions of senior clerk stenographer, principal clerk stenographer, secretarial assistant and administrative assistant respectively (10T111, 13T152-13T154). None of these titles was a business officer title.

Additionally, the budget and facilities planning associate was a range 32 position, a position several ranges higher than Chepitch's range 26 position as business manager at FASN and higher than the clerk/secretarial or administrative titles she held between 1974 and 1980 in the provost's office (R-82, 11T95). The higher salary range reflects a more complex job requiring greater work experience and skill sets and assigning higher level duties and responsibilities.

Based on the positions which Chepitch held between 1974 and 1980 in the provost's office, she did not work as a business officer in the provost's office. Also, among the responsibilities listed by the job posting, the budget & facilities planning associate was responsible for developing, establishing and managing a campus-wide data base which relates campus and unit productivity to their budgets and included sophisticated computer modeling (R-82). These were skills she did not have.

Chepitch testified that she thought she was capable of handling this responsibility but she was not really sure (13T19). She had never written computer programs (13T17). However, as an example of developing and managing computer databases, Chepitch cited a 1996 report which she generated recommending a vendor for a computer project involving part-time lecturers (PTL) (R-83, 13T17-13T19, 13T101). The project involved creating an initial database to maintain and record forms for PTL's (13T21-13T22). Chepitch was responsible for writing down what information needed to be entered into the computer program, soliciting vendors and interviewing them (13T26, 13T99).

Chepitch generated a report which recommended an outside vendor, MFG, to design, build and test the software as well as train users (R-83, 13T22-13T23, 13T25). She performed none of these functions herself (13T23, 13T100-13T101). Based on Chepitch's responsibilities, she did not have the skills to develop, establish and manage a campus-wide database.

Another responsibility detailed in the job posting was the development and maintenance of real estate data for the Newark campus and adjacent properties in the City of Newark and the monitoring of on-campus and off-campus lease activities (R-82). Chepitch had never negotiated leases on behalf of Rutgers with entities outside the University (13T19).

Associate Provost Vincenti interviewed Chepitch for the job on June 26, 1997, the day she learned from Hosford that the FASN office was being reorganized and her position as business manager eliminated (10T147-10T138, 11T6, 11T110, 13T15, 13T112). Chepitch never discussed her union activities with Vincenti although she did discuss them with his boss, Provost Samuels, during a lunch meeting in June of 1995 (12T88-12T89, 13T126)

Subsequently, in early July 1997, Vincenti informed Chepitch by letter that Eileen Lanno, a candidate from the office of budget and resources on the New Brunswick campus, was selected (11T110, 13T15-13T16, 13T28). The office of budget and resources was involved in examining, studying and modeling budget matters for the entire University (13T28).

Chepitch never spoke to Vincenti about why she did not get the job (13T16).

213. Sometime after July 1997, Chepitch applied for the position of senior executive assistant in the division of administration and public safety on the College Avenue campus of the University (R-84, 11T110, 13T28). The job posting required the senior executive assistant to provide support and

assistance in administrative matters pertaining to the development, implementation and management of policies, programs and operations in the key areas of student health, affirmative action, procurement, public safety, employee counseling, sexual harassment, mail services and other areas (R-84). Chepitch had no experience in the area of student health, police services, or employee counseling and only limited involvement in the other areas in her job as business manager in an academic unit (FASN) (13T30-13T34).

Associate Vice-President for Administration Leslie Fehrenbach interviewed Chepitch for the job (11T110, 13T29). Although Chepitch had some of the qualifications for the position, particularly in budgeting and accounting, the position required someone who would “be heavily into research” (11T110). In August or September 1997, when Fehrenbach called Chepitch to tell her she was not selected, she told Chepitch that she wanted someone who was “doing more written reports” (11T111, 13T30, 13T91).

214. In July or August of 1997, Chepitch applied for the position of departmental administrator in the department of chemistry on the Busch campus of the University (R-85, 11T111, 13T34). The job posting required a bachelor’s degree, preferably in engineering, the physical sciences, or a related field and extensive management or engineering management experience, with one year of experience in a research or academic environment (R-85). It also required basic knowledge of engineering or the physical sciences, micro-computing and finance (R-85).

Although Chepitch felt she had the qualifications in the financial areas, the position required someone with a scientific background (11T111, 13T36). Chepitch had B.A. and M.A. degrees in history and an M.B.A. degree in management. She did not get an interview (11T111). Chepitch

never spoke to anyone in the department about why she did not get an interview nor why she was not selected (13T37).

215. At about the same time that she applied for the position in the department of chemistry, Chepitch applied for the position of director of business services in the office of business services on the Newark campus (R-86, 11T111, 12T80, 13T38).

Chepitch felt that she had all of the necessary qualifications for this position, particularly in the areas of budget and grants (11T111). The job posting required a bachelor's degree in accounting or a related field and extensive experience in financial services management, preferably in a large complex environment such as a college or university (R-86, 13T40). Chepitch felt that her 30 years of experience in accounting and budgeting would qualify her (13T41-13T42).

A committee interviewed Chepitch but she was not one of the final applicants to be interviewed by Vincenti (11T111, 13T39, 13T124). In September or October 1997, Chepitch was notified by letter from Brooks that she was not selected (13T40). A candidate from the Camden campus was selected (11T111, 13T39). She never spoke to Brooks or anyone on the search committee as to why she was not selected (13T40).

216. Subsequently, Chepitch applied for the position of graduate school departmental administrator on the Newark campus (R-87, 11T112). She felt she was over qualified for the position because of her background in accounting, finance and facilities management, but she was "getting desperate at this time, since [she] did not have a job in sight" (11T112). The position was four ranges below her business manager position which was range 26 (11T112).

The job posting required excellent and state-of-the-art computer skills with good knowledge of

computer systems (R-85). On cross examination, in response to a question as to whether in 1997 she possessed excellent and state-of-the-art computer skills, Chepitch stated that she had the skills and capacity to do the job and that the term excellent was open to interpretation (13T44-13T45).

Chepitch did not get an interview (11T112, 13T43). She learned that she was not selected when she found out that someone else received the job (13T43). The successful candidate was Adrienne Alfonso, an administrative assistant in the math department who was trained by, and had worked as a secretary for, Chepitch in 1995 and 1996 (13T43-13T44). Chepitch never spoke to anyone about why she was not selected for the position (13T43).

217. Next, Chepitch applied for a position as departmental administrator at the Rutgers University Center for Operations Research (RUTCOR) on the Busch campus (R-88, 11T112, 13T45). Chepitch felt she was qualified for the position but did not receive an interview (11T112, 13T46, 13T118-13T120). Venner communicated by e-mail with the department chair requesting that Chepitch be considered for the position (13T47-13T48).

Chepitch never spoke to Department Chair Dr. Peter Hammer, who was the hiring authority, about why she was not selected (13T46). However, in late October or November 1997, she spoke to Venner who informed her that she had not been selected (13T47-13T48).

Chepitch was quite angry and upset when she spoke to Venner because she had not even gotten an interview and thought that it was University policy to interview people who are laid off and qualified for the position (13T48). Venner told her that the department chair did not want to interview her (13T121).

218. Next, Chepitch applied for the position of manager of employee data control in the

department of payroll services on the Busch campus (R-89, 11T112, 13T49). The job posting required extensive experience in payroll administration (R-89). Chepitch did not have this experience (13T51).

The director of the department interviewed Chepitch and told her at the interview that there were candidates from within the department being considered (11T112, 13T50). Chepitch was informed in late November or early December 1997 that she was not selected for the position (13T50). The successful candidate was a promotion from within the department (11T112, 13T52).

219. Finally, in November 1997, Chepitch applied for a senior accountant position in the division of University accounting on the Busch campus (R-90, R-91, 11T113, 13T52). The job posting required a bachelor's degree in accounting or finance and knowledge of sales tax and 1099/1042 reporting (R-91). Chepitch did not have a degree in accounting or finance nor did she have experience in the preparation of federal or state tax forms (13T55). Nevertheless, she felt that she had all of the accounting and budgeting experience necessary (11T113).

Chepitch was interviewed by Tim Stone and his assistant for the position and was informed by letter from Stone in December 1997 that she was not selected (11T13, 13T54). She never had a conversation with Stone about her unsuccessful candidacy, but Venner called her to say that the department wanted someone with more accounting experience (13T55).

220. Despite having held various positions in her 30-year career at Rutgers, Chepitch concluded that her experiences in applying for jobs in 1997 was different (11T113). Previously, she was either reclassified or moved into a position of new responsibility (11T113). Chepitch was angry that she was not selected for any of these jobs because she "... could not understand why a person of

[her] caliber was not selected (13T56).

Based on the foregoing, there is no evidence that the application or interview process was irregular. Sometimes she received interviews and at other times she did not. The interview process was controlled by the departments not centrally (11T68). The jobs she applied for were in many different departments and on different campuses. There is no discernible pattern to Chepitch's failure to receive interviews or job offers. Chepitch got feedback occasionally after an interview, but personnel only rarely got feedback from the departments and could not compel the departments to give it to them. This was not unique to Chepitch's candidacy (11T68-11T70). There were many discrete decision-makers on different campuses and in different departments and no evidence that they spoke to each other or central administration about Chepitch's candidacies or had knowledge of her union activities.

Moreover, Chepitch's inability to receive a new position in 1997 was not the first or only time she tried to get a different job at Rutgers. She had applied for positions in the past and been unsuccessful, e.g., executive associate for Vice-President Norman. Additionally, in 1997, when Chepitch began her job search, Venner cautioned her that only considering lateral opportunities narrowed her job prospects (R-65). Chepitch applied for fourteen positions. She was not qualified for approximately half of the positions based on the job posting requirements. In other situations, Chepitch was one of several qualified individuals vying for appointment. There is no reason to conclude that the selection of other qualified candidates over her was irregular.

Norman and Chepitch Lunch Meeting

221. In August 1997, during the period when she was applying for various University

positions, Chepitch met with Norman at an Assembly meeting. He asked how her summer was going (11T117). Chepitch was surprised because Norman appeared to think she was having a fine summer when the opposite was true: her job had been eliminated and she was unsuccessfully looking for a new job (11T117). When Norman realized Chepitch was upset, he suggested they get together for lunch which was scheduled for September (11T117).

222. On or about September 19, 1997, Norman and Chepitch met for lunch (11T117). Norman told her he spoke to Hosford about the reorganization and its effect on her job and he (Norman) understood personnel was trying to assist her (11T117). It is unclear from Chepitch's testimony when Norman and Hosford spoke. I infer, however, from the timing that Norman contacted Hosford after he met Chepitch in August to find out the facts of her job situation before their lunch meeting.

Chepitch told Norman she was upset over the reorganization which eliminated her position, forcing her to take early retirement and affecting her pension (11T118). Norman told her he had not realized it would be such a financial hardship for Chepitch (11T119).

Chepitch's September 1997 Grievance

223. Shortly after the lunch with Norman, on or about September 23, 1997, Chepitch received the letter from Hosford informing her that the new associate dean for resources and systems was hired and would begin work on September 29, 1997. Hosford released her from the obligation to report for work as discussed in finding of fact no. 198.

Shortly after receiving the Hosford letter, Chepitch requested a leave due to illness (R-70, 12T25-12T26). Her leave began before DaSilva arrived to start work as associate dean on

September 26, 1997 (12T27-12T28). She removed her personal effects from her office sometime in November 1997 (12T26).

224. As a result of the September 23, 1997 letter from Hosford, Chepitch filed a step 1 grievance dated October 6, 1997, under the APS problem solving procedures (R-70, R-92, R-93, 13T59, 13T63, 18T97-18T99). At some point after Chepitch filed the grievance, Hosford took the unusual step of having a messenger deliver correspondence to her house relating to the grievance because she refused a regular mail delivery (18T99-18T100).

The grievance alleged violations of various University rules and regulations, pertaining to vacation for staff members, staff layoff guidelines, affirmative action and equal opportunity policies, policies prohibiting harassment, staff discipline guidelines, code of ethics for administrative staff and regular performance review of personnel (R-93).

Chepitch did not receive Hosford's step 1 response dated October 22, 1997, before she pursued the grievance to Provost Norman Samuels at step 2 the same day (R-94, R-96, 13T64). Hosford denied the step 1 grievance on the grounds that Chepitch was not entitled to unused vacation days until the termination of her employment on January 6, 1998 (R-95). Once she reviewed Hosford's October 22 response, Chepitch again filed a step 2 grievance stating that all violations had not been addressed (R-96, 13T65).

On November 17, 1997, a step 2 hearing was held in the Newark office of the provost with Chepitch, Edith Frankel (Chepitch's advisor) and Associate Provost Norman Schnayer (R-97). On December 12, 1997, Schnayer issued his decision (R-97, 13T65). He found that the vacation issue was resolved by Hosford's step 1 response. As to Chepitch's entitlement to sick leave between

September 23, when Hosford released Chepitch from the obligation to report to work until January 6, 1998, her last day of employment, he found that she was ineligible for sick time since she did not have to report to work (R-97).

Regarding alleged violations of University's staff layoff guideline procedures, Schnayer found:

It appears that Ms. Chepitch's expectations of the kinds of assistance to be offered her has been much greater than the kinds of assistance provided. However, Mr. James Venner, of the University's Personnel Services has personally informed Ms. Chepitch of job opportunities within the University and has given her background information about the positions. Background information is not usually provided to job seekers.

Ms. Chepitch argues that she has not been given feedback about her application in many cases. This was often the case but in those instances where she was not informed of the reasons for not being selected, she did not press the issue. This remark is an observation only and does not excuse the hiring authority from the important assistance it can render an applicant by giving some information regarding the hiring process. Too often, hiring authorities fail to provide feedback in situations where it is clear to them, if not the applicant, that the credentials of the applicant fail substantially to meet the requirements of the position, as seen by the hiring authority. This seems to have occurred in one or two instances. Hiring authorities sometimes also fail to respond where an applicant has met the requirements but not at the level requested. Ms. Chepitch applied for several positions at advanced levels and Mr. Venner surmised that in some, that the hiring authority, needing the successful applicant to assume the full duties of the position as soon as possible, could not afford to provide a lengthy period of training to bring Ms. Chepitch's skill up to the level needed for the position. In at least one position for which she was interviewed, I was told that the interview was directly related to the policy stated in Mr. Norman's memo rather than her credentials.

Ms. Chepitch also asserts that she was not given opportunity to have office space, the use of a computer, access to e-mail or other accommodations to help her in a job search. Dean Hosford notes, however, that she had the use of her office and all the facilities with

which she was familiar between June 25, the date of her notice until September 26, when she was asked to vacate her office. Thereafter, she was offered space, the use of the telephone and a computer in the Department of Personnel but, due to a misunderstanding about the offer, she did not take advantage of the offer at once. The misunderstanding was cleared up by November 19, 1997.

Ms. Chepitch further asserts she was given no assistance in developing a resume. But she acknowledged that she had spoken with Ms. Ellen Azevido, the Associate Director of the Busch/Livingston career Services Office.

She also claims not to have received all of her mail at home, but the office of the dean forwards all of her personal mail (including paychecks) to her by a friend and University employee, Ms. Lachone McKenzie. I could discover no intent to keep any mail which belonged to Ms Chepitch from her. [R-97]

As to alleged violations of the University's affirmative action policy, Schnayer found that four of the six positions Chepitch applied for, but was not hired, were awarded to women. Regarding the transfer of Gary Roth from his FASN job to a position in the graduate school, Schnayer stated that according to Hosford, the position Roth was appointed to had job requirements significantly different from Chepitch's work experience. Schnayer found no evidence of age discrimination (R-97).

Schnayer also found no harassment based on her lay off occurring prior to her 55th birthday. He also found no discrimination related to the courier delivery from the office while she was ill and to the September 30 letter informing her that she had to remove her personal effects from her former office (R-97). Additionally, he rejected violations of employee disciplinary guidelines asserting that Chepitch's position was eliminated in a reorganization and not based on failure to perform. He noted that:

[P]oor communication in the dean's office, although not a violation of

any regulation or procedure, is a theme running through much of this [the grievance] process. Jane was not asked for any recommendations in the departmental reorganization nor did she learn about the reorganization, she says, until she was given the letter of June 25, 1997 telling her of the reorganization effective July 1. [R-97]

As to Chepitch's complaints that she was not given the opportunity to develop her talents through training because of her workload and inadequate staff, Schnayer found:

Dean Hosford asserts that Ms. Chepitch had sufficient opportunity to develop her skills over the years as office technology changed. His view sees Ms. Chepitch clinging to outmoded technology as the departments she served advanced quickly beyond her abilities. [R-97]

Finally, as to the assertion she was not given a performance review for 1997, he found that although a performance evaluation could have assisted Chepitch greatly in her search for another position, he did not see the value in a remedy in which she would now be evaluated (R-97). Schnayer determined that the failure to provide Chepitch with a 1997 evaluation was another example of "the poor quality of communication in the office of the dean" (R-97).

Chepitch appealed Schnayer's determination in a step 3 grievance filing (R-101, R-102).

225. On February 3, 1998, in response to Chepitch's step 3 grievance filing asserting violations of the 1994 Staff Layoff Guidelines, Assistant Vice-President for Staff Affairs and Director of the Office of Employee Relations Christine Mowry issued a two-part written decision denying any violation of University policies or administrative regulations (R-100, R-101).

As to Chepitch's claims that the division of personnel services violated Norman's 1994 staff layoff guidelines, Mowry found that the division "fulfill[ed] the responsibilities which are within its

authority and which were described in Mr. Venner's overview" (R-100).

Venner's overview detailed that:

. . . when personnel is made aware of a layoff, a Personnel staff member . . . makes sure the notice period is accurate; contacts the employee and invites her/him to come in to discuss what, if anything can be done to assist. If the employee is interested in continuing employment, the Personnel staff member tries to get an understanding of what the employee did, what the employee might like to do, and if possible an idea of background comparabilities. Personnel also answers any questions the employee might have related to benefit issues, offers space in the office with a computer to search the classifieds, helps with resumes, provides unemployment claim forms and submits them for the employee. Personnel advises the employee about positions which they know are in queue for posting, gives detailed job description information, and encourages departments to interview laid-off employees [T]hese are collaborative efforts with the employee." [R-100]

Specifically, Venner told Mowry that all of this support was provided to Chepitch, that he spoke to her on a regular basis and even assigned another personnel staff member to take over when he went on vacation. Associate Director for Personnel Services David Waldman explained that personnel took greater pains with Chepitch because of her length of service and he personally distributed her resumes at the University.

Regarding Chepitch's complaint that she was not given access to the State's job bank for unemployed individuals as per the 1994 staff layoff guidelines, Venner explained to Mowry that the State makes the rules regarding access and since Chepitch was not unemployed at the time of her job search, she was not entitled to access to the job bank (R-100).

Finally, with respect to not getting feedback from her interviews, Venner told Mowry that

Chepitch got feedback from a couple of interviews, but much of the feedback personnel received was, "We found someone better qualified . . ." which Venner did not feel would be helpful to Chepitch (R-100).

In addition to finding that personnel had fulfilled its obligations to Chepitch, Mowry wrote:

. . . [The] Division of Personnel Services does not have the authority to require a department to train, to hire, or even to interview any particular candidate for a position.

The Guidelines which you claim were violated were meant for an extraordinary situation, not for a situation in which an employee(s) is laid off because a department reorganizes. While I do understand your point that this is the only Guideline in existence pertaining to layoff and that it may have given you certain expectations, it is labeled "FY 1994 Staff Layoff Guidelines" and was clearly meant to pertain to the layoffs caused by budgetary constraints at that time.

However, even if these Guidelines had been meant to pertain to layoff situations generally, Personnel did assist you fully within the parameters of its authority and, therefore, there would have been no violation of them. [R-100].

226. In a second letter dated February 11, 1998, addressing Chepitch's step 3 grievance concerns, Mowry repeated her previous response that the 1994 staff guidelines were not applicable to Chepitch's layoff situation (R-101). Even if they were applicable, Mowry found no violation because the paragraph cited by Chepitch applies to choices which ". . . must be made in situations where there are several individuals who perform the same or closely similar functions and only some of the positions will be eliminated" (R-101). This paragraph was inapplicable to Chepitch's situation because her position was not the same or closely similar to her supervisor's [Gary Roth] whose position was also eliminated by Dean Hosford in the reorganization (R-101).

On the issue of the failure to issue a 1997 performance appraisal, Mowry sympathized with Chepitch's plight but found that the time for grieving a lack of performance appraisal was during the appraisal period (R-101). Therefore, she found this whole issue untimely and moot.

Regarding Chepitch's allegation that under the code of ethics she was not given adequate resources or support to develop new skills and learn new technology, Mowry agreed with Schnayer that she had sufficient opportunity, over the years, to develop her skills (R-101, R-97). Mowry added that ". . . all administrators have been required to do more, and better, with less for many years" (R-101).

Finally, Mowry found no discrimination in Chepitch's non-selection for the various positions for which she applied, citing that the positions were filled by both men and women and individuals who were both older and younger than Chepitch (R-101).

Chepitch did not appeal Mowry's step 3 grievance determination (13T74).

Norman and the Job in the University Post Office

227. After the September 1997 lunch meeting with Chepitch and her request on several occasions for his assistance in finding her another position, Norman spoke to many people out of respect for her many years of service (19T40-19T41). It was not unusual for Norman to take an interest in the placement process generally, especially where an employee, such as Chepitch, approached him with questions or solicited his assistance (11T84, 11T94-11T98).

On December 15, 1997, Norman telephoned Chepitch at home explaining that he located a job for her in the Rutgers post office on the Kilmer campus at range 18, eight ranges below her range 26 business manager position (11T73-11T74, 11T119, 12T57-12T58). Norman also explained that she

would have to be interviewed for the position and be chosen by the director (11T119). If Chepitch accepted the job, Norman told her he would hold her salary for two years at her current level (range 26) or until the job could be reclassified at a higher range (11T119, 12T58, 19T42).

Chepitch was interviewed and offered the job (11T120, 12T57). During this time (December/January) she was also interviewing for positions outside the University and was waiting for second interviews (11T120). She accepted the post office position and worked three weeks then was offered and accepted the position of business manager at the Children's Institute, her current job, with a salary of \$65,000 (11T120, 12T58, 12T62, 19T41, 19T113). The Children's Institute is a school for autistic and emotionally disturbed children consisting of one building housing 140 students and 20 teachers. Chepitch manages a budget of approximately \$4 million dollars (12T62).

Sometime after June 1997, but before accepting the job at the Children's Institute, Chepitch turned down a job offer as business manager at the Catholic Charities in Staten Island with a salary of \$55,000 plus a full benefits package (12T59-12T60).

On or about January 20, 1997, Chepitch retired from the University effective March 1, 1998 to obtain her pension benefits and full medical coverage (R-98, 11T120, 13T69). Under the Public Employees Retirement System (PERS), she was penalized for retiring before the age of 55 (11T120-11T121, 12T63).

228. Chepitch did not leave the payroll of Rutgers until she retired in March 1998 (12T53, 12T58). At the time of retirement, she was at the top of her salary range 26 position earning \$55,640 (R-74, 12T63, 12T95). Although Chepitch could have resigned instead of retiring, she chose to retire in order to retain full health benefits (12T54).

In April 1998, Chepitch began collecting her monthly pension benefit of \$2,136.75 (12T54, 12T61, 21T4). Additionally, in May of 1998, she received a supplemental compensation on retirement (SCOR) for unused sick leave of \$9,232.50^{57/} which she is only entitled to upon retirement (R-99, 12T55-12T57).^{58/}

With her \$65,000 salary at the Children's Institute and pension benefit, Chepitch received an annual income of approximately \$90,000 (12T62). She also received health benefits from her current employer in addition to the health benefits provided by Rutgers upon her retirement (12T73).

Chepitch's 1998 EEOC Charge

229. On July 2, 1998, Chepitch filed a charge with the Equal Employment Opportunity Commission (EEOC) (R-102).

On November 10, 1997, when Chepitch met with the EEOC representative and filled out an intake questionnaire (CP-71), she did not list her union activities as a reason for allegations of discrimination because the representative told her retaliation for union activity was not within the scope

^{57/} This money represented a \$15,000 payment for unused sick leave minus federal, state and other taxes (R-99).

^{58/} Chepitch initially testified that she had to fight the University for this payment and went through an internal grievance hearing to establish her entitlement to the unused sick leave (12T55-12T56). However, her October 1997 grievance addressed several concerns including Chepitch's concern that the time between September 23, 1997 (when Hosford released her from the obligation to report for work) and January 6, 1998 (when her employment was to end if she did not retire or take another job) not be charged to her sick leave (R-70, R-93, R-97, 13T69, 13T71). She was successful in that matter. Therefore, there was no "fight" with the University over the payment of SCOR monies. She received the maximum allowed by law upon retirement. Even if she had charged the time from the end of September 1997 to the beginning of January 1998, Chepitch was only entitled to the maximum limit of \$15,000 (13T69-13T70).

of EEOC claims and she would have to file such claims with PERC (R-102, 13T140). On July 2, 1998, when Chepitch filled out the EEOC charge of discrimination form, she did not list union activity as a basis for discrimination. She asserted discrimination based on her age and violations of the FY 1994 Staff Layoff Guidelines. Chepitch also believed that her job was eliminated because she was “. . . a strong assertive woman who did not play political games” (R-102).

On January 28, 1999, after conducting an investigation, the EEOC issued a dismissal and notice of rights (R-102).

ANALYSIS

The issue in this matter is whether Rutgers retaliated against Maureen D’Arcy, Beverly Tarter, Scott Randolph and/or Jane Chepitch for organizing on behalf of CWA. In re Bridgewater Tp., 95 N.J. 235 (1994), sets forth the standards for determining whether personnel actions were motivated by discrimination against the exercise of protected activities in violation of subsections 5.4a(1) and (3). A charging party must prove, by a preponderance of evidence on the entire record, that protected conduct was a substantial and motivating factor in the adverse personnel action. This may be done by direct or circumstantial evidence showing that the employee engaged in protected activity, the employer knew of this activity, and the employer was hostile towards the exercise of protected rights. Id. at 246.

If the employer does not present any evidence of a motive not illegal under the Act or if its explanation has been rejected as pretextual, there is sufficient basis for finding a violation without further analysis. Sometimes, however, the record demonstrates that both unlawful motives under the Act and other motives contributed to a personnel action. In these dual motive cases, the employer has not violated the Act if it can prove, by a preponderance of the evidence on the entire record, that the

adverse action would have taken place absent the protected conduct. *Id.* at 242. This affirmative defense, however, need not be considered unless the charging party has proven, on the record as a whole, that union animus was a motivating or substantial reason for the personnel action.

The CWA has not demonstrated, by a preponderance of the evidence, that the removal of D'Arcy's custodial/maintenance supervisory responsibilities, the reduction in Tarter's position from twelve months to ten months, the layoffs of Randolph and Chepich or their failure to secure other University positions were due to participation in the CWA campaigns. The CWA established, and Respondent agrees, that the individuals engaged in protected activity. However, CWA failed to demonstrate that every decision-maker for each personnel action was aware of the employees' protected activities. Moreover, the CWA did not establish that Rutgers, generally, or the decision-makers, specifically, were hostile to the exercise of the protected activity, but even if it had, Rutgers presented legitimate, non-pretextual reasons for its actions. In other words, the CWA failed to establish on the record as a whole, that union animus was a motivating or substantial reason for the personnel actions.

The "Vote No" Campaign

Throughout the summer and fall of 1995, the CWA conducted a union organizing drive seeking to represent the APS staff at Rutgers. Although a representation petition was not filed until June 12, 1995, there were ongoing discussions among APS employees during the spring regarding the possibility of unionization. The CWA had an open informational meeting at Rutgers in May 1995. Its newsletter was distributed beginning in May 1995 to APS employees and others. The Administrative Assembly became a forum for such discussions because Assembly leaders, including D'Arcy, Tarter and

Chepitch and others became involved early-on in the CWA organizing effort.

Vice-President Richard Norman spearheaded the University's response to the CWA campaign. He was assisted by Otzenberger, an assistant of Norman's Bob Kelsey, Mowry and Waldman. Norman's mission, delegated to him by President Lawrence, was to persuade eligible APS employees to "Vote No" to unionization.

In carrying out his mission, Norman hired outside consultants to advise him and Rutgers' managers about the "dos" and "don'ts" of a union campaign. Norman and one or two consultants met once with a larger group of about 75 managers to advise them of proper campaign conduct and once or twice on various campuses with smaller groups to discuss permissible conduct during the campaign.

Charging Party asserts that the hiring of the consultants constituted direct evidence of union animus. It characterizes the one or two meetings between the consultants and various management employees as training sessions designed to give top University managers the green light to engage in anti-union activities against the leadership of the organizing effort. Charging Party further asserts that I need not conclude decision-makers or supervisors received instructions from Norman or others in central administration to take specific acts, because the University's vigorous "Vote No" campaign sent clear signals to managers to take action against union leaders.

Respondent disagrees with Charging Party's characterization of its efforts to persuade APS employees to "Vote No." It asserts Rutgers' response to the CWA campaign was respectful and low key. Moreover, Rutgers contends it was within its rights as a public employer to express an opinion about unionization so long as its statements were non-coercive; it had a right to run a "Vote No" campaign. It further asserts the hiring of consultants to provide expertise was a prudent act. The

alternative was to leave managers in the dark and to their own devices. Additionally, it disagrees that the University's campaign sent clear signals to top managers to take action against union supporters. In support of this contention, it offered evidence of treatment afforded similarly situated APS employees (union supporters who played public and prominent roles in the 1995 campaign) which, it asserts, demonstrated the absence of hostility toward the organizing campaign and union organizers. Finally, it contends even if the University's campaign was evidence of union animus, animus on the part of the University is not necessarily imputed to individual decision-makers. Rutgers contends Charging Party must demonstrate each decision-maker was hostile toward the individual employee's exercise of protected activity.

The threshold decision on the consultant issue is whether Rutgers had a legal right to engage in pre-election campaigning and could encourage employees to vote against representation.

The unfair practice standard used to consider whether employer communications to employees violates the Act was developed in the private sector. In N.L.R.B. v. Corning Glass Works, 204 F.2d 422 (1st Cir. 1953) the court interpreted the free speech provision of the National Labor Relations Act (NLRA) and held:

. . . the Constitution of the United States protects an employer with respect to the oral expression of his views on labor matters provided his expressions fall short of restraint or coercion . . . and section 8(c) of the Act . . . protects an employer with respect to like expressions in written, printed, graphic or visual form, provided his expressions contain "no threat of reprisal or force or promise of benefit. Id. at 425-426.

The U. S. Supreme Court adopted that same language in NLRB v. Gissel Packing Co., 395 U.S. 575,

618 (1969):

. . . An employer is free to communicate with his employees any of his general views about unionization or his specific views about a particular union, so long as his communications do not contain a threat of reprisal or force or promise of benefit.

Although the specific language of section 8(c) of the NLRA does not exist in the New Jersey Employer-Employee Relations Act, the Commission has adopted the 8(c) standard. Camden Fire Dept., P.E.R.C. No. 82-13, 8 NJPER 309 (¶13137 1982); Rutgers, The State University, P.E.R.C. No. 83-136, 9 NJPER 276 (¶14127 1983); State of New Jersey (Trenton State College), P.E.R.C. No. 88-19, 13 NJPER 720 (¶18269 1987).^{59/} A public employer may express opinions about unions as long as the statements are non-coercive. Black Horse Pike Reg. Bd. of Ed., P.E.R.C. No. 82-19, 7 NJPER 502 (¶12223 1981).

Rutgers had a right to conduct a campaign generally urging APS employees to vote against unionization. School Dist. of Chathams, P.E.R.C. No. 91-112, 17 NJPER 334 (¶22147 1991). Absent either a threat of reprisal or promise of a benefit, its written or oral communications with APS staff before and after the campaign are protected as free speech. The secondary issue in this case is whether Rutgers' campaign crossed the line from permissible conduct to interference with the rights of employees under 5.3 of the Act to ". . . freely and without fear of penalty or reprisal . . . form, join and assist any employee organization or to refrain from any such activity." Once that line is crossed, union

^{59/} Lullo v. Int'l Assn of Firefighters, 55 N.J. 409 (1970) and Galloway Tp. Bd. of Ed. v. Galloway Tp. Assn. of Educ'l Secretaries, 78 N.J. 1 (1978) support the recommendation that section 8(c) of the NLRA be adopted in New Jersey.

animus is inferred.

The thrust of the University's campaign was two-fold: (1) it trained its managers how to conduct themselves during the campaign and election through meetings with Norman and outside consultants, and (2) it mailed literature to eligible employees explaining the election process, the issues and urging them to "Vote No."

Charging Party makes no assertion that any campaign literature contained a threat of reprisal or promise of benefit. The University's campaign literature was informational in tone and contained no factual misrepresentation. D'Arcy, the acknowledged leader of CWA's effort, described the University's announcement on the eve of the November 17th election in its newspaper, the Rutgers Focus, as neutral in tone. She also confirmed that a message containing dues calculations attached to employee pay stubs and distributed on the eve of the election was accurate.

Regarding the hiring of outside consultants, the campaign impacted approximately 2,000 APS employees in all departments throughout the University system. Hiring consultants to assist the central administration and provide expertise was consistent with Norman's concern that the campaign be conducted fairly and correctly: he wanted to make sure those representing the University understood the rules of engagement. The consultants and Norman met once or twice with groups of managers training them on the "dos" and "don'ts" regarding a union organizing campaign. Witnesses Waldman, Webb, Warshaver and Otzenberger, who attended these meetings, confirmed the sessions were educational and assisted them in understanding how to conduct themselves appropriately during the campaign. Warshaver particularly remembered being advised not to make any promises if discussing the University's position with employees. Otzenberger's contemporaneous notes of a November 15

meeting with a small group of managers reflected the type of advise handed out by Norman; the attendees were told to urge eligible employees to vote, discussed the University's official ballot counters, described a mailing encouraging voters to follow ballot instructions, explained the professional option and significance of the "24 hour" rule (prohibiting captive audience meetings with employees within 24 hours before an election) and explained generally how to answer employee questions relating to eligibility.

Hiring consultants is consistent with the University's right to run a "Vote No" campaign. CWA's characterization of the consultants as "union busting" may be its view of the University's action, but was not evidence of unlawful behavior.

Based on the foregoing, I do not find the Charging Party's contention that the University's "Vote No" campaign, e.g., hiring consultants, meetings/training sessions with its managers and campaign literature, constitutes union animus. See generally Atlantic Cty. Utilities Auth., P.E.R.C. No. 94-97, 20 NJPER 195 (¶25091 1994) (employer statements during organizational campaign by employer concerning the likelihood of subcontracting did not demonstrate unlawful motivation and did not constitute unlawful threats merely by discussing possible pitfalls of collective bargaining); Atlantic Comm. Coll., P.E.R.C. No. 87-33, 12 NJPER 764 (¶17291 1986) (letters from a college administrator to faculty urging them to vote against union representation did not constitute unlawful interference where the communication contained no threats or promises of benefits and generally urged employees to vote no). Cf. Sea Breeze Health Care Center, 331 NLRB No. 149, 168 LRRM 1418 (2000) (employer's "Union Truth Quiz" during election campaign consisting of 17 questions with anti-union bias and a prize of \$1427.60 for completing quiz to be given to employee's favorite charity

violated LMRA).

The Administrative Assembly and Richard Bird: the Olzewski Document and August 1996 Motion

Charging Party contends the University monitored Administrative Assembly activities through Assembly Delegate Richard Bird to control the Assembly and frustrate unionization efforts. It asserts Rutgers encouraged him to distribute an anti-union document (the Olzewski document) at an Assembly meeting. It contends that after the election the University, through Bird, introduced a motion at the August 1996 Assembly meeting to have CWA supporters resign from the Administrative Assembly. CWA contends the motion pressured D'Arcy, a union organizing leader, to resign as Assembly president. These actions, it argues, demonstrate union animus and are attempts by the University to dominate or interfere with CWA's organizing efforts in violation of 5.4a(2) of the Act.

Respondent counters that Bird was active in the Assembly for years, opposed unionization and freely exercised his right to express those views. It asserts Bird was not acting as Rutgers' agent when he brought the Olzewski document to an Assembly meeting for dissemination and when he introduced the motion at the August 1996 Assembly meeting. It contends Bird introduced the motion, which was never voted upon, not to stop union activities but out of a concern for having the administration take the views of the Assembly seriously. D'Arcy's resignation from the Assembly presidency was not primarily the result of University pressure. Finally, Rutgers asserts Bird's actions had nothing to do with the personnel decisions affecting D'Arcy, Tarter, Randolph and Chepitch.

Commission cases dealing with a(2) claims generally involve organizational rights or the actions of an employee with a conflict of interest caused by his membership in a union and his position as an agent of an employer. Union Cty. Reg. Bd. of Ed., P.E.R.C. No. 76-17, 2 NJPER 50 (1976);

Middlesex Cty. (Roosevelt Hosp.), P.E.R.C. No. 81-129, 7 NJPER 266 (¶12118 1981), Camden Cty. Bd. of Chosen Freeholders, P.E.R.C. No. 83-11, 9 NJPER 156 (¶14074 1983). While motive is not an element of an a(2) offense, there must be a showing that the acts complained of actually interfered with or dominated the formation, existence or administration of the employee organization. The Commission has held that the type of activity prohibited by 5.4a(2) must be “pervasive employer control or manipulation of the employee organization itself.” North Brunswick Tp. Bd. of Ed., P.E.R.C. No. 80-122, 6 NJPER 193, 194 (¶11095 1980). Such is not the case here.

CWA’s assertion that Bird monitored Assembly activities for the University to control it and frustrate unionization efforts is not supported by the evidence. Under Assembly bylaws, the University was entitled to be represented in the Assembly by one non-voting delegate appointed by the president. Vice-President Norman, through his designated representative, Stephen Otzenberger, regularly attended general Assembly and Assembly committee meetings, received Assembly newsletters and other materials and spoke frequently with D’Arcy and other delegates. D’Arcy routinely submitted Assembly material to Otzenberger for approval prior to distribution, although he never censored any mailings. Assembly meetings and activities, both before and after the 1995 campaign, were open to the delegates attending, the APS staff through Assembly newsletters and other mailings and to the University through Norman’s office. There was no need for the University to utilize the services of Bird to monitor the Assembly activities or the sentiment of delegates.

In support of its contention, CWA relies on a March 17, 1995 e-mail from Bird to Otzenberger. The Bird e-mail alerted Otzenberger that “the sentiment for unionization is gathering momentum like a runaway train” and urged the University to publicize its efforts to protect APS staff

regarding health benefits, the core issue driving unionization efforts. However, the information imparted by Bird's e-mail was not new or privileged information. The same concerns were expressed 24 hours earlier in a March 16, 1995 e-mail from D'Arcy to Otzenberger. In D'Arcy's e-mail, she urged Otzenberger and Norman to put the brakes on a situation she also described as a "runaway train" leading to a demand for unionization of the APS staff. The information imparted by Bird to Otzenberger and the concerns he raised were identical to D'Arcy's. Both felt University action addressing the health benefits issue was key to forestall unionization. Both, as members of the Assembly, were entitled to communicate their views to the University Assembly liaison, Otzenberger. Bird's communication carries no more significance than D'Arcy's and is not evidence of union animus.

Next, CWA asserts Bird acted as the University's agent when he assisted another Assembly member, Charles Olzewski, in disseminating a document opposing the CWA organizing effort at an Assembly meeting. CWA contends Bird's actions violated University guidelines prohibiting campaigning in the Assembly. It argues the University, through Bird, violated its own rules. The CWA contends this is evidence of union animus. CWA bases its contention on discussions and an e-mail communication between Bird and Otzenberger.

The University contends that while it might have agreed with the sentiments expressed by Olzewski, it was careful not to involve itself in its distribution or to give its approval to it in any way. Rutgers asserts that an employer's decision not to suppress employee speech opposed to unionization does not constitute union animus. The employee was entitled to the same "free speech" protections as the CWA and the University.

Bird opposed the unionization effort and Olzewski's document mirrored Bird's views. When

Olzewski initially approached Bird and asked him to co-author the document, Bird suggested they run the document by the University to make sure distributing it was not illegal and would not interfere with the University's own "Vote No" stance. Bird also wanted the University to fund its distribution. Bird brought the document to Otzenberger who told Bird he would speak to Norman about it.

Although Norman agreed with the sentiments expressed by Olzewski's document he told Otzenberger it was not appropriate to distribute or discuss it at the Assembly. Additionally, Norman refused to provide University assistance to Olzewski or Bird in its production or distribution. Otzenberger communicated Norman's sentiments to Bird. Bird told Otzenberger he would just bring the document to the Assembly meeting on his own and leave it in the back of the room. Bird and Otzenberger confirmed that Otzenberger neither encouraged nor authorized Bird to distribute the document at the Assembly and the University provided no assistance, financial or otherwise.

Olzewski authored the document opposing the CWA effort. CWA does not contend the sentiments expressed by Olzewski were threatening or coercive. Therefore, the views expressed were protected by free speech rights. Black Horse Pike. CWA suggests Bird was acting as the University's agent when he brought the document to the Assembly for distribution which violated University guidelines prohibiting campaigning in the Assembly. It asserts Bird's violation of the guidelines is evidence of Rutgers' union animus. I find, however, that Bird acted on his own neither representing the University nor restricted by it.

In Commercial Tp. Bd. of Ed., P.E.R.C. No. 83-25, 8 NJPER 550 (¶13253 1982), aff'd 10 NJPER 78 (¶15043 App. Div. 1983), the Commission, citing R. Gorman, Basic Text on Labor Law at pp. 134-137 (1976), found the employer violated the Act when its superintendent and principal made

threats and were acting within their apparent authority as Board agents whether the Board formally ratified or even knew of the threats. Gorman also provides the agency standard for employees who are not supervisors. They are “not presumed to be acting on behalf of the employer unless they are acting within the general scope of their employment or management has instigated such conduct or has ratified it after the fact (either expressly or by silence). Gorman at 135. See Matawan-Aberdeen Reg. Bd. of Ed., P.E.R.C. No. 85-110, 11 NJPER 307 (¶16109 1985) (individual Board member did not act as an agent of the Board where record established that he acted adversely to the desires of the Board and Board did not ratify his actions). Cf. Barnegat Twp. Bd. of Ed., P.E.R.C. No. 91-18, 16 NJPER 484 (¶21210 1990) (payroll clerk’s actions mistakenly sending unused personal day benefits to custodians and cafeteria workers bound Board where her actions were within the general scope of her employment). Even assuming Rutgers administration had a duty to police the distribution of campaign literature under its own guidelines, there is no evidence that when Bird brought the Olzewski document to the Assembly meeting, he was acting on behalf of the University or at its direction.

Next, CWA contends Bird acted as an agent of the University in introducing an August 1996 motion in the Assembly seeking to remove CWA supporters including D’Arcy. It asserts Bird acted on behalf of Norman and the administration to force D’Arcy and others out of positions of leadership in the Assembly to punish them for their union activities and forestall future unionization. These actions, it argues, is evidence of Rutgers’ union animus. It relies on a series of e-mail exchanges between D’Arcy and Bird. CWA maintains the e-mails demonstrate Bird’s motion reflected Norman’s desire not to see “union activists” in Assembly leadership roles. It asserts the e-mails are evidence of Rutgers’ union animus.

Respondent asserts Bird was not the University's agent when he introduced the motion. He acted on his own out of a legitimate concern the administration was ignoring the views of the Assembly, because D'Arcy, as Assembly president, and other Assembly delegates were more aligned with the unionization effort than the success of the Assembly. Bird was not seeking to stop union activity.

In December 1995, after the election, when D'Arcy ran for a second term as Assembly president, Bird expressed concern to her that she "could not ride two horses" (see finding of fact no. 49), meaning, supporting CWA and being Assembly president. After being assured by D'Arcy that she would concentrate on her role as Assembly president, Bird supported her reelection. Bird, however, later became concerned when he learned, after being invited to join a focus group, that D'Arcy was still involved in union organizing activities.

After the 1995 election and the second organizing effort, the University determined it needed to define the most important issues to APS employees and address them. It formed focus and advisory groups consisting of managers and APS employees. Bird became convinced the administration, and Norman in particular, did not trust the leadership of the Assembly because some, especially D'Arcy, were CWA supporters who had no interest in seeing the Assembly succeed. Bird felt the focus group was usurping the role or function of the Assembly.

In July 1996, a series of e-mails ensued between Bird and D'Arcy which reinforced Bird's conviction that D'Arcy's continuing support of the CWA would result in her subconscious desire to see the Assembly fail. No matter what Norman's feelings were at this time, Bird, himself, believed D'Arcy's dual roles as Assembly president and CWA organizer was detrimental to the Assembly. These concerns prompted the August motion. I find Bird continued to act on his own volition, and not

as an agent of the University, to protect the viability of the Assembly as an independent collegial body.

Even if Norman expressed to Bird or anyone else his concern about D'Arcy's ability to keep her activities as Assembly president and CWA supporter separate, his comments about that conflict of interest were non-coercive and within the sphere of permissible opinion or discussion under Black Horse Pike. In Ridgefield Park Bd. of Ed., P.E.R.C. No. 84-152, 10 NJPER 437 (¶15195 1984), the Commission affirmed a Hearing Examiner's decision, finding a principal's statement that a union vice-president should resign from an advisory committee did not constitute unlawful interference. In particular, the Commission found the principal's suggestion that the union representative should not also serve on the local advisory committee because the principal believed her position as union grievance chairperson would compromise her objectivity on the Advisory Council was within the sphere of permissible criticism and discussion under Black Horse Pike. Like Ridgefield, Norman and the administration had a concern during the 1995 CWA campaign about D'Arcy's ability to keep her role as Assembly president separate from her activities on behalf of the CWA organizing drive. Rutgers developed campaign guidelines to address this issue. Unlike Ridgefield, D'Arcy was never asked nor encouraged by the administration to resign from the Assembly presidency.

Moreover, the Assembly was created by Rutgers as an advisory body to assist the administration in addressing concerns of the APS staff. It does not have the status of majority representative as defined by our Act. In Rutgers, The State University, P.E.R.C. No. 76-13, 2 NJPER 13 (1976), the Commission distinguished the University's delegation of a broad range of managerial functions to collegial bodies made up of faculty and/or administrative employees from collective negotiations rights exercised by those employees. It recognized that collegial governance is a "historical

reality” in the field of public higher education which may exist simultaneously and harmoniously with collective negotiations rights. However, the Commission also recognized that the collegial body and majority representative have separate functions.

By seeking advice and recommendations from the Assembly, the University, to a degree, delegated managerial functions regarding issues of policy for APS employees’ concerns, and Assembly delegates became a functional part of management in that respect. Therefore, D’Arcy’s voluntary participation in the Assembly and any concerns raised by Norman regarding D’Arcy’s ability to remain objective in her role as Assembly president goes to the essence of collegial governance and did not interfere with D’Arcy’s rights to organize for CWA. Norman’s opinion and statements in this regard are not as much a free speech right as D’Arcy’s expressed support for the CWA while serving as Assembly president. Norman did not prohibit D’Arcy from organizing on behalf of the CWA, his concerns related solely to the Assembly.

As to D’Arcy’s resignation from the Assembly in August 1996, the evidence supports a finding that the decision was D’Arcy’s alone and was prompted by many factors, not the least of which were significant family difficulties involving both her daughters and her parents which affected her professional and personal life. D’Arcy confirmed that no one in the administration prevented her from maintaining her dual roles or suggested she resign her Assembly presidency. Since Bird’s motion was withdrawn and not voted on, I do not infer that it caused D’Arcy to resign. Even if it was one of many factors prompting D’Arcy’s decision, Bird’s motion does not demonstrate union animus on the part of Rutgers. Bird was not their agent: the motion came from his own concerns about D’Arcy’s and others’ dual roles within the Assembly and CWA. His actions were neither instigated by management nor ratified

after the fact. In any event, Bird's participation in the Assembly is no more indicative of agency than D'Arcy's or any other delegates' similar participation. They are co-equals with differing view points.

Lawrence's Cocktail Party Statement

In April 1995, D'Arcy attended a cocktail party at President Lawrence's house. Lawrence introduced D'Arcy to the chair of the University's board of governor's stating ". . . this is the woman who is causing all the ruckus or something like that." D'Arcy understood the remark to be humorous, a joke. CWA asserts the remark is evidence of union animus. Rutgers responds that President Lawrence's state of mind is irrelevant since there is no evidence he played a role in any of the actions complained of. Additionally, relying on Auguster v. Vermilion Parish School Board, No. 00-30736, U.S.C.A. (5th Cir. 5/3/01), it contends stray remarks are not sufficient to prove motive unless they are made in close proximity to the action taken, made by the individual with authority over the decision at issue and made in connection with the decision.

In Burlington County Prosecutor, P.E.R.C. No. 92-29, 17 NJPER 465 (¶22221 1991), the Commission found a supervisor's comment referring to an employee's union button as being red and an insignia of a commie was said in a "joking fashion" and was, therefore, not unlawfully coercive or threatening.

D'Arcy did not feel threatened by the remark nor did she consider it anything more than casual, friendly banter. It occurred two months before the filing of the representation petition by CWA and at a time when the Assembly and Rutgers were still working together on the health benefits issue. Like Burlington, Lawrence's statement was said in a joking fashion and was, therefore, not unlawfully coercive or threatening. Moreover, there is no evidence on the record that President Lawrence played

any role in the subsequent personnel actions affecting D'Arcy, Tarter, Randolph or Chepitch. The evidence establishes that personnel decisions are made locally on the individual campuses not by central administration. Consequently, I do not find the remark violated the Act.

The Focus/Advisory Groups

After the 1995 election, the administration formed focus and advisory groups to help it identify and address concerns of the APS employees. The groups were made up of management employees and APS employees. CWA contends the formation of these groups is evidence of union animus. It cites no cases in support of this proposition. Respondent asserts these groups had nothing to do with the actions complained of by Charging Party and are not evidence of animus.

Just as the University had a right to form the Administrative Assembly as an advisory group, the formation of focus or advisory groups is an extension of the University's right to delegate managerial functions to collegial bodies and is not automatically evidence of union animus. See Rutgers, The State University, supra. The University created these groups to address concerns of unrepresented employees with the obvious hope it would encourage them to remain unrepresented. That alone is not evidence of animus; it is part of the University's management program and also protected by its free speech rights.

Comparative Evidence of General Hostility

CWA contends Rutgers' central administration was hostile to the CWA effort and by its hostility gave a "green light" to University managers to take adverse personnel actions against union organizers. Rutgers denies that its central administration was hostile to the CWA and introduced evidence regarding treatment of similarly situated individuals, e.g., other CWA organizers, between

May of 1995 and March of 1999, to support its contention.

CWA contends the comparative evidence is not relevant because D'Arcy, Tarter, Chepitch and Randolph were different from other campaign activists since they were the lead organizers. With the exception of D'Arcy, however, there was no credible evidence Tarter, Randolph or Chepitch were lead organizers or differently situated from others whose names and pictures appeared in the CWA mailings. Moreover, Chepitch's name did not appear in any CWA literature nor did she write any articles for CWA mailings. Although Charging Party asserts Chepitch was "the Union presence" on the Newark campus, it offers no evidence in support of its contention. Also, although Tarter's and Randolph's name and picture appeared in the CWA newsletters and mailings, 61 other names also appear in support of the CWA effort. D'Arcy described all of the individuals listed in the Administrative Organizers as lead organizers.

Evidence of personnel actions taken regarding 61 CWA organizers (other than D'Arcy, Tarter, Randolph and Chepitch) revealed no pattern of hostility; in 1995 and 1996 Rutgers either took no action or promoted the majority of employees who were CWA organizers. There is no inference of hostility to be drawn from the University's treatment of similarly situated CWA supporters during the 1995 campaign or afterwards.

Knowledge and Hostility of Individual Decision-Makers

Rutgers asserts that the central administration was not hostile to the CWA campaign but contends, even if it were, CWA has not established that the decision-makers had knowledge of or were hostile to the protected activities. Personnel actions were taken locally on the various campuses and in different departments. Knowledge and hostility, it contends, must be actual not imputed. In

support of its contention, it cites several cases. It particularly it relies upon UMDNJ, P.E.R.C. No. 98-127, 24 NJPER 227 (¶29107 1998) and Tp. of Teaneck, P.E.R.C. No. 2000-45, 26 NJPER 48 (¶31018 1999). In UMDNJ, the Commission found the charging party did not meet her burden under Bridgewater because she did not demonstrate that the decision-maker had knowledge of the individual's union activities. Similarly, in Teaneck, the Commission found no 5.4a(3) violation where the record contained no evidence the supervisor/decision-maker acknowledged or cared in any way about charging party's protected activity.

CWA contends an inference should be drawn here that the decision-makers' actions were causally related to the administration's alleged hostility to the CWA organizing effort. It cites no cases in support of its assertion. It nevertheless asserts the actions of Rutgers in opposing the CWA campaign and setting up focus/advisory groups after the election sent a strong message to University managers to take action against lead organizers. That assertion is not persuasive.

In Village of Ridgewood, P.E.R.C. No. 99-114, 25 NJPER 341 (¶30147 1999), the Commission considered the issue of transferred hostility. It rejected an ALJ's recommended decision and found no direct or circumstantial evidence of union animus where the employee's immediate supervisor, the decision-maker, was not hostile to the employee's union activities even though other supervisors' exhibited hostility to the employee's activities as a shop steward. Similarly, in UMDNJ, supra., the Commission adopted a hearing examiner's recommended decision dismissing CWA's charge alleging the employer discriminated against an employee for participation in CWA's organizing campaign and subsequent negotiations team. The charge asserted the employee was laid-off during a reorganization and not re-employed in retaliation for the exercise of these activities. The hearing

examiner determined that when the recommendation to reorganize was made, the individual responsible for the recommendation had no knowledge of the employee's participation on the negotiations team and was not hostile to the organizing activity. See also State of New Jersey (Dept. of Human Services), P.E.R.C. No. 96-20, 21 NJPER 352 (¶26218 1995) (the Commission dismissed a charge alleging the State terminated a per diem nurse because of her organizing efforts, although the timing of the discharge two weeks after an organizing meeting was suspicious, the evidence supported finding the supervisor who terminated the nurse acted independently of her superiors and was not aware of the nurse's protected activity); South Jersey Port Corp., H.E. No. 98-8, 23 NJPER 555 (¶28277 1997) (hearing examiner dismissed a charge alleging employer constructively discharged a port guard because of his support of a organizational campaign, finding evidence failed to show that the supervisor responsible for obtaining the guard's "resignation" had knowledge of his involvement in the organizing campaign and concluded, absent knowledge by the decision-maker, the protected activity could not have been a substantial or motivating factor in the constructive discharge).

There is no evidence in the record that President Lawrence, Vice-President Norman, Director Otzenberger or anyone else from upper management played a role in the personnel actions affecting D'Arcy, Tarter, Randolph or Chepitch. The decisions were made locally on different campuses and/or departments of the University by different individuals. In order to find a violation, it is necessary to examine the individual circumstances surrounding the individuals and actions taken.

Maureen D'Arcy

The parties do not dispute that D'Arcy exercised protected activities in 1995 and for a few months in 1996. President Lawrence, Vice-President Norman and Director Otzenberger were aware

of her activities through her participation in the Administrative Assembly and discussions with her.

CWA contends that shortly after D'Arcy announced the RAPSS effort, she was targeted in retaliation for her continuing support of CWA. A series of allegedly harassing incidents occurred beginning in May 1996 and continued through August 1996. These incidents involved a letter from the campus police chief to D'Arcy asserting interference with fire emergency procedures, Provost Gordon's veto of D'Arcy's merit award for 1995/1996, a written warning from her immediate supervisor for by-passing the chain of command, a reprimand for mishandling a dormitory theft incident and a denial of D'Arcy's request for leave time to take her daughter to college.

CWA also contends that shortly after Otzenberger learned of the RAPSS effort, a 1997 reorganization on the Camden campus was launched to discourage D'Arcy and others from becoming involved in union organizing efforts. In support of its contention, CWA asserts Camden associate Provost Mark Rozewski's project objectives did not match the purpose of the study conducted by outside consultants, and D'Arcy was not interviewed by the consultants even though, as director of housing, she supervised housing custodial/maintenance employees and her operation would be impacted.

Finally, CWA contends the manner in which the reorganization was conducted evidenced hostility to D'Arcy's protected activities; procedures were not followed, her employees were locked out, locks were changed and she was not given keys.

Rutgers disagrees that the 1997 Camden reorganization was launched to retaliate against D'Arcy. It contends the 1997 reorganization was too remote in time from her protected activity to support an inference of hostility. Additionally, Rutgers contends Rozewski, who was responsible for

the 1997 reorganization on the Camden campus, was working in New Brunswick when D'Arcy was involved in organizing efforts; he was not aware of D'Arcy's protected activities, consequently, not hostile to them.

Rutgers also asserts the reorganization had a legitimate business rationale, to effectuate savings and shift dollars to academic initiatives. Rutgers asserts D'Arcy suffered no adverse personnel action from the reorganization; her title, salary and benefits remained the same. Rutgers contends the implementation of the reorganization may have embarrassed D'Arcy because it was not conducted with finesse, but reorganizations are rarely implemented smoothly.

Regarding the specific incidents of alleged harassment, Rutgers contends the incidents occurred well after D'Arcy ceased her union activity in April 1996, and were largely the same types of incidents she experienced before her involvement in the CWA campaign. It characterizes D'Arcy as hypersensitive and the incidents as everyday events (fire alarm and report of dormitory theft) to which D'Arcy overreacted. More importantly, Rutgers asserts there is evidence some individuals involved in the incidents had no knowledge of D'Arcy's union activity and none harbored animus to that activity.

Timing of Events Affecting D'Arcy

Rutgers cites numerous cases to support the proposition that timing is an important factor in determining whether or not hostility or union animus can be inferred. Rutgers contends the timing of events affecting D'Arcy are too remote to support an inference of hostility. In particular, Rutgers relies on two cases: Tp. of West Orange, P.E.R.C. No. 99-76, 25 NJPER 128 (¶30057 1999) and In re Warren Cty., H.E. No. 95-26, 21 NJPER 255 (¶26164 1995). In Tp. of West Orange, the Commission found remarks by a supervisor a year before an employee's resignation were too remote

in time to support a finding of retaliation (constructive discharge) for protected activities (union organizing activities). However, in Warren Cty., the Hearing Examiner found a termination 20 days after reinstatement as a result of a grievance arbitration supported an inference of hostility to protected activities.

With regard to the alleged harassing incidents here, the timing of the events between May 1996 and August 1996, is close to D'Arcy's protected activities ending in April of 1996. CWA alleges the timing of these events is suspicious. However, even if timing was suspicious, Rutgers had legitimate business reasons for each incident. Timing in these instances is not evidence of hostility or union animus.

With regard to the 1997 reorganization, the timing, more than a year after D'Arcy ceased involvement in the CWA organizing effort, is too remote, without other evidence, to support an inference of hostility.

May-August 1996 Personnel Actions

a. CWA contends D'Arcy's June nomination for a merit award for the 1995/1996 academic year was vetoed by Provost Gordon in retaliation for D'Arcy's organizing activities. Charging Party, however, failed to establish Gordon's decision was in any way connected to D'Arcy's CWA activities. D'Arcy's testimony about her conversation with Gordon indicates she was not treated differently because of her union activities; Gordon overrode her nomination because it was poorly written and he felt she was not a good executive. He denied a connection between his decision and her union activities. There is no independent evidence to support an inference that he acted for motives other than those stated. Moreover, Gordon turned down nominations in the past from which decision

employees appealed to Norman. Therefore, although this might have been the first time Gordon reversed a nomination by Maradonna, it was not a unique or unprecedented action on his part. Also, by 1996, D'Arcy had only received one other merit award which was for the 1992/1993 academic year. She did not receive them consistently before the CWA campaign nor did she receive them consistently afterwards, e.g., she received one merit award in 1998. Therefore, I find the 1996 decision not to give D'Arcy a merit award is not evidence of animus.

b. The Charging Party contends a reprimand given to D'Arcy by her supervisor, Cynthia Riggs, was in retaliation for her activities on behalf of CWA. It asserts that D'Arcy had never been disciplined before her participation in the CWA organizing campaign.

In June 1996, Riggs issued a reprimand to D'Arcy because Riggs found out D'Arcy had gone to her (Riggs') boss, Maradonna, about a theft incident in the dormitories. Riggs felt D'Arcy had broken the chain of command. D'Arcy went to Maradonna only after reporting the theft incident to Riggs and getting no assistance from her. Whether D'Arcy correctly by-passed Riggs or whether Riggs' reprimand was warranted are not the issues. D'Arcy was not engaged in protected activity at the time she reported the theft incident. She was not acting as a CWA representative, but in her capacity as director of housing. The evidence supports that the reprimand was issued not out of hostility to D'Arcy's CWA organizing activities, but because Riggs perceived D'Arcy had gone over her head, thereby breaking the chain of command. Cf. Camden Cty. Sheriff, P.E.R.C. No. 2001-55, 27 NJPER 184 (¶32060 2001) (where the Commission found the Camden county sheriff violated the Act when he reprimanded a sheriff's officer for reporting safety conditions in his capacity as PBA delegate and evidence indicated he did not go outside the chain of command. Commission also found

that if the officer had gone outside the chain of command, the sheriff should have discussed it with him in his capacity as a union delegate, not as an employee.)

Also, there is no evidence to suggest that Riggs was hostile to D'Arcy's organizing efforts on behalf of the CWA. The evidence supports the opposite conclusion. D'Arcy and Riggs frequently discussed the CWA organizing campaign and unionization. Riggs expressed excitement about D'Arcy's challenging Rutgers on behalf of the administrators like herself and unionizing them. Riggs was initially eligible to vote. Nothing in the record suggests her attitude changed after she was removed from the eligibility list.

c. CWA also contends that a letter from University Police Chief Thompson criticizing D'Arcy for interfering with fire scene procedures was issued in retaliation for D'Arcy's protected activities. CWA contends Zuccarello's directive set forth new procedures and D'Arcy was admonished unfairly for follow pre-existing procedures, e.g., only fire department personnel could silence an alarm. It asserts Thompson's letter and the meeting were the result of retaliation for D'Arcy's support of CWA.

The evidence does not support the general CWA contention. D'Arcy was on notice from 1994 that Rutgers police were authorized to silence alarms. As a result of a 1994 incident where D'Arcy's assistant manager mistakenly silenced a fire alarm, Zuccarello directed D'Arcy to adopt operating procedures directing that only Rutgers police or Camden fire department personnel could silence an alarm. Zucarello's directive recognized the authority of the Rutgers police at the fire scene independent of the presence of fire department personnel; not every fire alarm resulted in calling in the fire department. D'Arcy's conclusion that until the fire department arrived no one was in charge and, therefore, no one could silence an alarm was mistaken. In any event, common sense dictates that at the

scene of an emergency someone must take control to ensure the appropriate actions are taken to avoid injury.

Although D'Arcy thought she was following correct procedures, Thompson and Chief Zuccarello disagreed with her. Thompson's letter and the meeting with Riggs and D'Arcy grew out of that disagreement and not in response to D'Arcy's CWA activities. Additionally, there is no evidence Thompson or Zuccarello were aware of D'Arcy's union activities or were hostile to them.

d. In August 1996, two students reported thefts from their dormitory rooms. D'Arcy called her custodial staff together to discuss the thefts and cautioned them to work in pairs to avoid having body searches when they left the building. One of the employees got very upset and felt D'Arcy was violating her constitutional rights. The employee threatened D'Arcy and was escorted out. D'Arcy summoned the police.

There is no basis to conclude that Maradonna was motivated by hostility to D'Arcy's union activities in the way he responded to this matter. The written warning addressed concerns raised by D'Arcy's mishandling of a situation with her staff. D'Arcy's statements to her staff caused one employee to become so upset her actions precipitated police presence. D'Arcy herself acknowledged both during Maradonna's investigation and in her testimony that her actions were not appropriate. She recognized there would be consequences for her poor judgment. Consequently, I conclude the written warning was not in retaliation for her union activities.

e. Finally, CWA contends Riggs' August denial of D'Arcy's request for leave time to take her daughter to college was in retaliation for D'Arcy's union activities. Even if Riggs' denial was insensitive or unreasonable, there is no support for the conclusion the denial was related to D'Arcy's activities as a

union organizer. As previously discussed, Riggs was sympathetic to D'Arcy's union efforts.

The 1997 Camden Reorganization

CWA asserts a 1997 reorganization of the Camden campus was launched to discourage D'Arcy and others from mounting another organizing campaign. It contends reorganization efforts began shortly after Otzenberger had lunch with Beverly Tarter and Jane Chepich and learned about the second CWA organizing effort known as RAPSS. It asserts the reorganization had serious implications for D'Arcy and sent a clear message to all employees on the consequences for leading union organizing campaigns. CWA contends the fact that D'Arcy was not in the loop and only learned of the consultants' study after her assistant manager was interviewed is evidence the reorganization was pretextual. Finally, CWA asserts the manner in which the reorganization was conducted by police presence, the changing of locks, the refusal to give D'Arcy a key to her building and the refusal to let her speak with her staff were actions taken in retaliation for her union activities.

Rutgers asserts the reorganization which was effectuated in August 1997 after a study by independent consultants DeLoitte and Touche was legitimate. It accomplished the goals of enhancing academic initiatives while eliminating administrative redundancies. Rutgers contends D'Arcy suffered no adverse consequences; she retained her title, salary, benefits and hours of work and lost no promotional opportunities. It contends Mark Rozewski who was responsible for the reorganization only came to the Camden campus in October 1996 well after D'Arcy's involvement with CWA, knew nothing of her union activities and was not hostile to her involvement in the organizing efforts.

Mark Rozewski was responsible for the 1997 reorganization on the Rutgers New Brunswick campus as director of physical and capital planning during the operative period in 1995 and briefly in

the spring of 1996 when D'Arcy was campaigning for CWA. He had no role in the central administration's "Vote No" campaign led by Norman. He was not eligible to vote, received no CWA literature and met D'Arcy for the first time when he was promoted to the position of associate provost of administration and finance on the Rutgers Camden campus in October 1996. Although in January 1997, he was appointed to a post-election advisory group together with approximately 70 other managers to help the administration identify concerns of APS staff, he did not participate in the group nor was he aware of its responsibilities. There is no evidence Rozewski was aware of D'Arcy's union activities.

Even assuming her visibility as leader of the campaign would have come to his attention, there is no evidence that Rozewski was at all hostile to the CWA campaign or specifically to D'Arcy's role in it. Prior to his employment at Rutgers in 1979, Rozewski had experience as a union shop steward, member of a collective negotiations team and later as leader of an unsuccessful campaign to organize department store employees. He harbored resentment against the department store employer for what he believed was retaliation for leading the organizing effort. Without any direct or circumstantial evidence otherwise, Rozewski's experience suggests he would be sympathetic to union organizing efforts and not seek to retaliate against D'Arcy for her role in the campaign.

CWA's assertion that the reorganization effort began shortly after Otzenberger learned from Tarter and Chepitch about RAPSS, is not supported by the time line. RAPSS began in the winter of 1996, after the election, and ended sometime in the summer of 1996. The luncheon with Otzenberger took place in the spring of 1996, not in the spring of 1997 as Charging Party claims in its brief. Rozewski and Camden Provost Dennis initiated a management audit study in the winter of 1997. The

study culminated in July 1997 and the reorganization was implemented in August 1997. The timing of these events does not support an inference of hostility. Op. of West Orange, supra.

Rutgers maintains that since there was no change in D'Arcy's salary, benefits, work hours or other terms and conditions of employment, there was no adverse personnel action arising from the reorganization. Other than removing the supervisory responsibilities for the custodial/maintenance staff, D'Arcy's salary and benefits package did not change. Removal of responsibilities, however, may constitute an adverse personnel action because of impact on promotional opportunities. In this instance, since the reorganization D'Arcy has had more time to address issues relating to student room assignments and improving the facilities to attract students to live on campus as opposed to commuting. On balance, there appears to have been no adverse impact on her career.

Additionally, the facts do not support CWA's contention that the reorganization was launched as a pretext to retaliate against D'Arcy and send a message to others not to attempt a union organizing effort. In the winter of 1997, enrollment in Camden was down as evidenced by the vacancy rate in the Camden housing units which was the highest in the Rutgers system. There was an immediate need to cut operational costs to offset the subsidy of the housing operation. Also, there was no additional State funding for new faculty positions. Rozewski and Dennis determined it was necessary to reallocate resources internally in order to enhance academic initiatives, thereby increasing enrollment and reducing the housing vacancy rate.

The reorganization accomplished Rozewski's and Dennis' goals of effectuating savings through the reallocation of internal resources to academic initiatives. The reorganization resulted in over \$200,000 in savings which Rozewski converted to funds for hiring faculty members in the computer

sciences, psychology and sociology departments as well as the creation of a new program in criminal justice. Savings were also allocated to purchase additional newspaper, radio and television advertising and improve public spaces on the campus to attract prospective students and their parents. The overall results of these initiatives were increased enrollment and a drop in the housing vacancy rate. Both results were goals identified by Rozewski and Dennis at the outset of their efforts to reallocate resources.

Nevertheless, CWA suggests an adverse inference be drawn from the manner in which DeLoitte and Touche, the consultants, conducted the study, e.g., D'Arcy as director of housing was not initially interviewed. It asserts Rozewski gave specific instructions to the consultants not to interview D'Arcy. It contends D'Arcy's 1995 and 1996 union activity motivated the University to exclude her from the interview process which eventually recommended removing custodial/maintenance supervisory responsibility from the housing operation and D'Arcy. This inference is too speculative, illogical and unsupported by the evidence.

No credible facts were introduced to establish the consultants were given specific instructions to exclude D'Arcy from the process. The consultants initially interviewed key individuals who had hands-on experience with the work being studied. They interviewed D'Arcy's assistant manager who was responsible for supervising the day-to-day functions of the housing custodial/maintenance staff. They did not interview D'Arcy's supervisor, Riggs, nor did they initially interview D'Arcy. Nevertheless, after D'Arcy contacted the consultants and asked to be interviewed, she was interviewed.

Rozewski denied giving the consultants a list of individuals to interview or not to interview.

However, even if Rozewski had given DeLoitte and Touche a list of employees to interview excluding D'Arcy's name, and even if he was mistaken in excluding her, there is no evidence that his decision was rooted in union animus or hostility to D'Arcy's union activities.

Moreover, there is no evidence that the consultants' recommendations were tainted by union animus. D'Arcy was not the only individual impacted by the consultant's recommendations. Although the consultants identified the housing and physical plant custodial/maintenance functions as operational redundancies, redundancies were also identified in the campus services office. Rozewski concurred. Specifically, the reorganization resulted in the campus services office being eliminated and its director and a clerk laid off. Moreover, the recommendation to merge the housing physical plant custodial/maintenance staffs was not unique and mirrored the structure prior to 1993. Both actions, e.g., eliminating the campus service office and removing the custodial/maintenance staff from housing, resulted in the operational savings needed by Rozewski to achieve the goals of enhancing academic initiatives and increasing enrollment. This was the task assigned to DeLoitte and Touche when it was retained to conduct the study on the Camden campus. There is no indication in the record the consultants' study was initiated and designed to remove the custodial/maintenance function from D'Arcy's supervision to retaliate against her for her union leadership or to send a message to other employees to avoid union activities.

Finally, CWA asserts the manner in which the reorganization was effectuated is evidence of hostility to D'Arcy's union activities. Specifically, it contends Rozewski's "communication plan" was not followed because D'Arcy never had an opportunity to meet with her staff to discuss the changes before the police and locksmith arrived to change locks on the outside building doors, and before the

employees were informed by the director of physical plant in a general meeting. D'Arcy did not authorize the lock change and was not given a key to the outside doors until she asked for one several weeks later. Finally, D'Arcy could not understand why Mickelson was denied access to the housing unit after he was told of his layoff and asked to leave immediately. She felt his layoff was different from others being handled that day.

This reorganization was the first major undertaking of its kind in twenty years on the Camden campus. Assuming it could have been handled in a more efficient and sensitive fashion, there is nothing to indicate any action was taken because of D'Arcy's union activities. The locks to her personal office were not changed. The outside building locks were changed, but are only significant at night when the buildings are locked. Even then, guards are on duty 24-hours to open doors for authorized personnel. D'Arcy was never denied entrance. As to the handling of her Assistant Manager Mickelson's layoff, there is no inference to be drawn between it and D'Arcy's protected activities. The personnel action taken against Mickelson is not an adverse personnel action imputed to D'Arcy. In any event, Mickelson was subsequently employed by Rutgers in another position on the New Brunswick campus.

Conclusion as to D'Arcy

Based on the foregoing, I do not find evidence of hostility or animus to D'Arcy's union activities. Moreover, the actions complained of were taken for legitimate non-pretextual reasons. Accordingly, there is no violation of 5.4a(3) or derivatively (1) of the Act as to D'Arcy.

Beverly Tarter

Beverly Tarter, like D'Arcy, engaged in CWA organizing efforts and was, therefore, engaged in protected activities in 1995. There is no indication Tarter was involved with the brief 1996 second

campaign. Norman, Otzenberger and her boss, Director of Graduate and Professional Admissions Donald Taylor were aware of her activities. In June 1996, Tarter was informed by Taylor, that as the result of budgetary cutbacks her position was being reduced from twelve months to ten months. Taylor, however, was able to delay the implementation of the reduction until September 1, 1997.

CWA contends that the reduction in position was in retaliation for Tarter's organizing activities. It asserts the University's reasons for the reduction were pretextual. In support of this contention it maintains Tarter was the lead minority recruiter. It asserts reducing her position was illogical when 1994 remarks by President Lawrence regarding minority achievement garnered negative publicity making minority recruitment more vital and difficult. Also, it argues that if the position was reduced for legitimate budgetary reasons, why did Taylor tell Tarter even if money were restored to the budget, her twelve-month position would not be restored. CWA further contends Tarter was not interviewed or appointed to a position as law school admissions director because of the exercise of her protected activities.

Rutgers disagrees and asserts Taylor's actions were taken for non-pretextual legitimate business reasons. The University contends Taylor harbored no hostility or union animus to Tarter's involvement with the CWA campaign. His statements regarding the likelihood of restoring Tarter's position even if money became available, was not a "smoking gun" indicating the budget cut was pretextual. It was merely an attempt by Taylor to prepare Tarter to accept that the reduction was not a short term situation but a long term reality. Rutgers also contends Tarter's performance as a minority recruiter or her job performance generally are not at issue. University-wide directives to cut department budgets impacted employees across the board. Finally, Rutgers asserts Tarter's claims are

untimely because Tarter received notice of the reduction in her position more than six months before the filing of the charge. It contends the time, for purpose of determining the statute of limitations, is calculated from the notification date of an adverse personnel action not the date on which the adverse action occurs.

The Statute of Limitations

Rutgers asserts Tarter knew from her discussions with Taylor on June 19, 1996, that the decision to reduce her position was final for the foreseeable future. She understood Taylor's statements to mean the decision was a "done deal." Therefore, Rutgers argues, the operative event was that unequivocal notification.

CWA disagrees. It contends the charge is timely because it was filed within six months of the implementation of the decision to reduce Tarter's position – September 1, 1997. It asserts the actual reduction in Tarter's position is the adverse personnel action, not the notification.

The Act requires that an unfair practice charge must be brought within six months of the alleged unfair practice. N.J.S.A. 34:13A-5.4c states:

. . . no complaint shall issue based upon any unfair practice occurring more than 6 months prior to the filing of the charge unless the person aggrieved thereby was prevented from filing such charge in which event the 6-month period shall be computed from the day he was no longer so prevented.

In application, the statute of limitations period normally begins to run from the date of some particular action, such as the date the alleged unfair labor practice occurred, provided the person(s) affected thereby are aware of the action. The date of the action could be the date an action is announced and/or the date an action is implemented. The action date is known as the "operative date," and the six-month limitations period runs from that date. Therefore, in order to be timely, a charge must

be filed within six months of the operative date. Charges and amendments filed past that date are generally untimely. Two exceptions to timeliness requirements are (1) tolling of the limitations period and (2) a demonstration by the charging party that it was "prevented" from filing the charge prior to the expiration of the period.

The standard for evaluating statute of limitations issues was set forth in Kaczmarek v. N.J. Turnpike Auth., 77 N.J. 329 (1978). The Supreme Court explained that the statute of limitations was intended to stimulate litigants to prevent litigation of stale claims, but it did not want to apply the statute strictly without considering the circumstances of individual cases. Id. at 337-338. The Court noted it would look to equitable considerations in deciding whether a charging party slept on his rights. The Court still expected charging parties to diligently pursue their claims.

Here, there is no claim CWA was prevented from filing its claims on behalf of Tarter before December 31, 1997. The issue is whether the operative event triggering the running of the six-month period was the notification of the reduction in Tarter's position (June 19, 1996) or the date Tarter became a ten-month employee (September 1, 1997). If it is the former, the claims as to Tarter are untimely and must be dismissed.

In Warren Hills Reg. Bd. of Ed., P.E.R.C. No. 78-69, 4 NJPER 188 (¶4094 1978), the Commission considered a timeliness claim regarding a charge asserting unilateral implementation of split sessions for the seventh grade. The charge alleged violations of 5.4a(1) and (5) of the Act. The Commission upheld the Hearing Examiner's dismissal of the charge as untimely but held that the operative event was not the Board's decision to institute the split session but the implementation of the decision. Similarly, in Jamesburg Bd. of Ed., P.E.R.C. No. 80-56, 5 NJPER 496 (¶10253 1979), the Commission considered the timeliness of a charge alleging unilateral change in a school calendar. The Commission found the charge was timely because it was filed within six months of the first day of school when the change was implemented. It determined the statute of limitations may run from the date a change is announced or from the date it is implemented. See also Monmouth Cty. Sheriff, H.E. No.

90-36, 16 NJPER 156 (¶21063 1990) (where a Hearing Examiner rejected the employer's timeliness argument finding the six-month statute of limitation may run from the date announcing the change in automobile assignment policies or the date automobiles were actually assigned.)

Rutgers distinguishes Warren Hills for several reasons: (1) the underlying claim in Warren Hills involved failure to negotiate terms and conditions of employment not discrimination for the exercise of union activities; (2) the timeliness language in the decision was dicta because the Commission had already determined the underlying issue was non-negotiable and the Commission's decision was premised on the decision/impact dichotomy subsequently abandoned in Bd. of Ed. of Woodstown-Pilesgrove v. Woodstown-Pilesgrove Educ. Assn., 81 N.J. 582 (1980); and (3) no subsequent Commission decisions make the distinction between notice and implementation for purposes of determining timeliness.

Tarter's 5.4a(3) claim asserts a violation based on the reduction in her position. Whether the June 1996 notification of the reduction had a chilling effect and supports a separate claim of violation under 5.4a(1) is not the issue. The reduction in position is a discrete act which gives rise to a separate and distinct charge alleging discrimination in retaliation for the exercise of protected rights under 5.4a (3) and derivatively (1) of the Act. Because the reduction in position represents a discrete personnel action, it is not an impact arising out of the notification. Therefore, the Woodstown-Pilesgrove analysis is inapposite.

Rutgers cites several cases in support of its contention that notification of an adverse action controls in determining timeliness of claims. However, these cases support that the personnel action alleged to violate the Act is the operative event. For instance, in several of the cited cases, the charge alleged a violation of a union's duty of fair representation. The Commission found the operative event was the date the employee was notified of the union's refusal to represent the employee. State of New Jersey (Div. on Civil Rights), P.E.R.C. No. 94-116, 20 NJPER 273 (¶25138 1994), aff'd 21 NJPER 319 (¶26204 App. Div. 1995), certif. den. 142 N.J. 571 (1995); City of Newark, D.U.P. No. 96-1,

21 NJPER 294 (¶26187 1995).

Similarly, in City of Paterson, D.U.P. No. 96-6, 21 NJPER 310 (¶26197 1995), although the operative event was the notice of termination not the actual termination, the gravamen of the charge was the employer's improper notification procedures and the refusal of the union to represent the employee. Both the notification and refusal to represent took place on the same date. The charge was filed more than six months from that date. Similarly, in State of New Jersey (Zamensky), D.U.P. No 98-33, 24 NJPER 247 (¶29118 1998), aff'd P.E.R.C. No. 98-152, 24 NJPER 338 (¶29159 1998), using the latest date possible in which the employee knew the State was intending to terminate the employee, the Director determined the operative event was when the employee received the hearing officer's report terminating him from employment. Finally, in Tp. of Lumberton, D.U.P. No. 2000-4, 25 NJPER 391 (¶30168 1999), the charge asserted the Township refused to rescind the employee's resignations in violation of 5.4a(1) of the Act and the union breached its duty of fair representation. The Director found the operative events were the Township's refusal to rescind and the union's refusal to provide assistance.

These cases support that the cause of action accrues when the event triggering the violation occurs. Depending on the violation asserted, notice of an intended action may be sufficient to establish a claim. Recently, in National Railroad Passenger Corp. v. Morgan, ___ U.S. ___, 88 FEP cases 1601 at 1606-1607 (2002), the United States Supreme Court addressed the continuing violation doctrine. The Court explained that:

... discrete discriminatory acts are not actionable if time barred, even when they are related to acts alleged in timely filed charges. Each discrete discriminatory act starts a new clock for filing charges alleging that act.

Discrete acts such as termination, failure to promote, denial of transfer, or refusal to hire are easy to identify. Each incident of discrimination and each retaliatory adverse employment decision constitutes a separate actionable "unlawful employment practice."

The reduction in Tarter's position occurred on September 1, 1997. The charge was filed on December 31, 1997. Tarter's claims are timely.

The SROA Budget Cut

Having found that Tarter's charge was timely, I, nevertheless, conclude that Rutgers did not reduce her position because of her exercise of protected activity.

The SROA program President Lawrence implemented in 1996 required each department to cut a percentage of its budget and return the monies to central administration. The office of graduate and professional admissions together with other University departments was notified in the spring of 1996 that its budget for the 1996/1997 academic year needed to be reduced by three percent to accommodate the President's SROA program. Three percent of the graduate and professional admissions budget represented approximately \$21,000.

This was not the first budget cut Taylor had faced in the office. Throughout the 1990's, a series of budget cuts resulted in reduced staff size through layoffs and reductions in positions. In the spring of 1996 when Taylor was notified of the SROA budget cut, operating expenses were already at bare bones. He and Associate Director Michael Holcomb looked to personnel changes to re-coop the dollars. On April 30, 1996, Holcomb recommended three options for reducing the overall budget by three percent while preserving the operating budget, including reducing Tarter's position to ten-months. There is no evidence Holcomb was aware of Tarter's CWA activities or, if he was, that he was hostile to them.

Although Taylor was aware of Tarter's union activities, his actions are not consistent with hostility. He agreed with the University's "Vote No" stance during the CWA election, but his right to do so is protected as free speech. Black Horse Pike. Tarter confirmed Taylor never expressed any concern to her about her union activities. Nor did Taylor discuss them with anyone in central administration or Holcomb. During the SROA budget cuts, Taylor first attempted to avoid having to make them by contacting central administration. When his attempt was not successful, Taylor sought

and gained approval to soften the blow to Tarter by deferring the action for one year. He also approved her request to work a reduced work week instead of taking off the months of July and August. He then changed staff meeting days to accommodate her day off and ensure she was not excluded from administrative staff discussions. None of these actions support that Taylor was hostile to Tarter's union activities.

Also, there is no direct evidence of hostility that Taylor warned Tarter to cut back on her Assembly grievance chair activities. Taylor denied making such a warning. There is no independent evidence to support Tarter's testimony. Additionally, the 1997/1998 performance appraisal was not admitted into evidence. It cannot be used to support this contention. In any event, there is nothing in the appraisal to support CWA's assertion regarding the warning.

Similarly, Taylor's June 1996 discussion with Tarter about the finality of his decision to reduce her position and his contemporaneous notes of that meeting are not evidence of hostility or union animus. Taylor's statements reflected the reality of 1990's budget cuts throughout the University and in his department. Taylor did not want to hold out false hope to Tarter that things would turn around because of his experience. He knew that even if resources became available, her position would likely not be restored. Subsequent events proved Taylor correct in his assessment. When an administrative assistant retired in 1998 and was replaced by a lower salaried employee, the savings were returned to central administration and reallocated for other uses. The memorandum is not in conflict with the stated reasons for Taylor's decision to reduce Tarter's position. It is not a "smoking gun."

Finally, there is no evidence that Taylor's decision to meet the SROA budget by reducing Tarter's position and laying off a senior clerk was pretextual. His reasoning for choosing Holcomb's first and third recommendations was logical. Reducing Tarter's position and laying off a senior clerk produced the revenue needed to meet the SROA budget cut. There is no evidence that Taylor's decision was based on any consideration of Tarter's union activity or that it was not based on the reasons professed.

As to CWA's contention that reducing Tarter's position conflicted with the University's minority recruitment effort and was evidence Taylor's decision was pretextual, it offered no evidence that the SROA program is in conflict with University's strategic plan or that minority recruitment has suffered. Minority recruitment was not an isolated concern of admissions. For instance, it was also addressed through housing, faculty and staff recruitment. Presumably, the SROA initiative to divert department administrative resources generally to enhance academic programs impacted Rutgers ability to attract both minority and non-minority students. That decision was an educational policy decision. Whether or not the decision yielded the desired results is not relevant. The evidence supports the SROA budget cut was not done to achieve a particular goal in the office of graduate and professional admissions. No employee was immune from the impact of the SROA budget decisions nor was Tarter the target because of her CWA efforts.

The Law School Position

CWA maintains Tarter was not interviewed or chosen for the position of law school admissions director in 1998, because of her union activities.

There is no evidence on the record of who the decision-makers were with respect to this position, whether they were aware of Tarter's union activities or were hostile to them. Tarter was one of at least 100 applicants for the job. She had applied for jobs at the University before her involvement with the 1995 CWA campaign for which she was qualified and did not receive interviews or appointment. The application for the position is too remote in time to support an inference of hostility. Top of West Orange, supra. Consequently, there is no basis to conclude that Tarter was not appointed for this position or interviewed in retaliation for her union activities.

Conclusions as to Tarter

Based on the foregoing, I do not find evidence of hostility or animus to Tarter's union activities. Moreover, the actions complained of were taken for legitimate non-pretextual reasons. Accordingly, there is no violation of 5.4a(3) or derivatively (1) of the Act as to Tarter.

Scott Randolph

Scott Randolph became involved with the CWA campaign in the spring of 1995. Randolph attended meetings with other organizers and wrote articles for the CWA newsletter and allowed his name and picture to be used. He also spoke to his staff both individually and in groups during lunch hours around his campus. There is no evidence that his efforts on behalf of CWA continued after the December 1995 election. His efforts on behalf of CWA are protected activities under Bridgewater.

CWA maintains Randolph was laid off in May 1997 by his boss, Associate Vice-President for Enrollment Corinne Webb, in retaliation for his activities in the CWA campaign. It asserts Webb was aware of Randolph's union activities because she was a member of the University's focus/advisory groups and because Randolph kept CWA literature in his office. CWA, contends an inference should be drawn from Randolph's "glowing thirty-year career," his merit award for 1995/1996 and his role in minority recruitment, an issue vital to the University's strategic plan, that Webb's professed reasons for the reorganization in the office of undergraduate admissions were pretextual. Additionally, it asserts that the manner of Randolph's layoff (he was given no advance notice and only six hours to clear out his desk) demonstrated hostility to his union activities. Finally, CWA maintains Randolph was not interviewed for or appointed to other positions, including the position of law school director in 1998, in retaliation for his union activities.

Rutgers contends Webb had no knowledge of Randolph's union activities and was not hostile to them. His immediate supervisors (Pullen and Holohan) were neither aware of nor hostile to Randolph's union activities when they disciplined him and gave him an unsatisfactory performance appraisal in 1997. I find that Webb undertook the 1997 reorganization and laid off Randolph for legitimate, non-discriminatory reasons. Randolph's lay off was not vital to the minority recruitment effort. Rutgers' minority recruitment has increased since Randolph's departure. Webb's reorganization freed up resources to achieve the University's admissions goals.

Webb's Awareness of Randolph's Protected Activity

During the 1995 CWA campaign, Webb was associate provost on the Rutgers Camden campus. She only came to New Brunswick as associate vice-president of enrollment management in September 1996. Webb was generally aware of the 1995 CWA campaign and attended one meeting with the University's outside consultants who informed her and other managers what they could and could not do during the campaign. However, Webb was not aware of any role Randolph played in the CWA campaign. She did not receive or see any of the CWA mailings. There is no evidence Randolph campaigned on the Camden campus, and, Randolph never discussed his involvement with the CWA with Webb. Indeed, according Randolph, he never spoke to Webb during the eight or nine months she headed his office until the meeting in May 1997 when he was informed of his lay off.

CWA contends Webb was aware of the union literature in Randolph's office. Webb, however, never entered Randolph's office. There is no evidence where the CWA material was kept or if it was in plain view.

CWA also asserts Webb was aware of Randolph's activities because she was a member of the focus/advisory groups after the 1995 election. However, even if Webb had participated in these groups, CWA failed to prove that membership gave her access to information about Randolph and his union activities. The focus/advisory groups were formed after the election by the University to identify issues of importance to APS employees. There is no evidence these groups discussed specific union supporters.

Hostility to Randolph's Union Activities

Even if Webb was aware of Randolph's union activities, there is no evidence she was hostile to those activities.

CWA contends Webb's lack of experience in admissions and "quick" assessment of the undergraduate admissions office are evidence her decision to eliminate Randolph's position was pretextual. CWA's focus is misplaced.

Webb's abilities are not at issue, only her motivation in eliminating Randolph's job. State of New Jersey (Glassboro State College), P.E.R.C. No. 93-31, 18 NJPER 496 (¶23228 1992), aff'd 20 NJPER 402 (¶25203 App. Div. 1994).

There is no evidence direct or circumstantial that Webb's restructuring and consequent layoff of Randolph were motivated by union animus. Webb had legitimately decided to eliminate a position and had to choose between Randolph and Wright. Webb chose to layoff Randolph instead of Wright. Webb considered length of service but weighed their relative performance and found Wright to be the stronger employee. Wright had held the title of coordinator of multi-cultural recruitment for six years and had received a glowing performance appraisal for 1996/1997 from both Pullen and Webb. Prior to Webb's tenure, Wright had received glowing performance appraisals for the previous three years.

Randolph's performance record was not as good. His appraisals between 1993 and 1996, prior to Webb's arrival, were inconsistent. The appraisals contained both praise and criticism.

In 1996/1997, unlike Wright, Randolph received an unsatisfactory performance appraisal from Webb. The appraisal reflected significant difficulties Randolph experienced with his immediate supervisors, Pullen and Doris Holohan. Pullen especially noted Randolph's attitude which she felt impeded his ability to adapt to changes in admissions and affected his co-workers. Two weeks before the appraisal Holohan issued a written warning noting Randolph's continuing inability to follow certain admissions guidelines and failure to meet a deadline for notifying candidates of final application decisions. There is no evidence, nor does CWA maintain, that Pullen or Holohan were either aware of Randolph's union activities or were hostile to them.

In addition to the Pullen/Holohan difficulties, Randolph had embarrassed Webb in front of her boss, Dr. Nancy Winterbauer, when Webb invited her to visit the office. When it came time to choose between Wright and Randolph, Webb considered her observations as well as his 1996/1997 performance review. She chose to retain Wright. I find that choice was not based on Randolph's exercise of union activities.

Layoff Guidelines

CWA maintains that under University layoff guidelines which require every reasonable effort be made to place employees in other positions within areas for which they are qualified, Webb should have considered Randolph for the downgraded admissions officer I and II positions created as a result of the restructuring.

Webb had many legitimate reasons to support the layoff decision, including her own observations of Randolph's demeanor (at times "very loud, opinionated and difficult" (20T56)) and her assessment of his performance which was supported by the observations of his immediate supervisors. In any event, the two downgraded admissions officer positions were not funded at the time of Randolph's layoff and could not have been filled at that time. Subsequently, when they were posted, Randolph did not apply.

Minority Recruitment

CWA contends Randolph's layoff was pretextual because he was a minority recruiter and minority recruitment was a priority after President Lawrence's 1994 remarks about minorities and testing. It asserts the layoff of an experienced minority recruiter at this time was illogical.

However, the record shows that Webb's restructuring of the office of undergraduate admissions, and the layoff of Randolph and Hodos has not negatively impacted that effort. Indeed, Rutgers' increase in applications has exceeded the rate of high school growth by 20 percent and the applicant pool has increased from 23,000 to 29,000.

The Layoff

CWA contends the manner in which Randolph's layoff was carried out manifests hostility to his union activities. Randolph learned for the first time on May 23, 1997, that he was being laid off. He was given a few hours to pack up his office and leave. CWA also asserts Randolph was treated differently than Hodos, the other professional employee, who was given advance warning of the

personnel action.

On May 23, 1997, Hodos and Randolph were notified by Webb that their positions were being eliminated and they would be compensated for the next 125 working days as per University regulations and their length of service. They were both given until 4:30 p.m. to remove their personal belongings. The letters given to Hodos and Randolph explaining the layoff decisions were identical. It was suggested they were relieved of their positions immediately in order to devote their full time and energies to working with the division of personnel concerning other employment opportunities. Hodos had learned at his April 1997 performance appraisal, that his job was going to be eliminated because Webb knew he was considering retirement and wanted to confirm whether it would be necessary to send him a layoff notification.

In Mantua Tp., P.E.R.C. No. 84-151, 10 NJPER 433 (¶15194 1984), the Commission adopted a Hearing Examiner's decision finding the Township unlawfully laid off an employee for organizing activities. The Township acted four days after a PERC election, laid off the employee instantly with severance pay contrary to Township's practice in any other layoff and refused to grant the employee the benefit of re-employment personnel policy contained in the Township's code.

Here, unlike Mantua, although it was not usual at Rutgers for a career employee to be given short notice upon layoff to leave the premises, it was not uncommon. In her first few weeks at New Brunswick, Webb asked an employee who had resigned to leave by the end of the day. Former Associate Director of Personnel Services David Waldman testified the decision as to how long an employee was to remain on the job was done on a case-by-case basis. When Webb effectuated the restructuring in undergraduate admissions, she wanted to move forward as rapidly as possible to meet the enrollment goals she was charged with improving. Randolph was not singled out. Hodos, who had more seniority, was also asked to leave immediately and clear out his personal belongings. Although Hodos had been informed during his April performance appraisal his position was being eliminated, there is no evidence that he was aware when it would take affect or how quickly he would be asked to

leave. The unionized support staff were given the same short notice their positions were eliminated as Randolph and Hodos. Although Randolph's treatment may have been insensitive, there is no evidence it was motivated by his union activity.

Additionally, unlike Mantua, Randolph was given all benefits he was entitled to under University regulations including compensation for 125 working days in accordance with his 25-years-plus of employment as well as use of the services of the division of personnel in identifying job opportunities and securing other employment. There is no evidence Rutgers refused to grant Randolph the benefit of any rules or regulations governing layoff and re-employment.

Finally, in Mantua, the adverse personnel action occurred four days after the protected activity, a PERC election. Here, Randolph's layoff occurred more than a year after his involvement in the CWA campaign.

Application for other Positions

CWA contends Randolph applied for other positions at Rutgers and was not interviewed or appointed to them in retaliation for his union activities.

There is no evidence in the record to indicate who made the decisions regarding interviews and appointments, whether any of the decision-makers were aware of Randolph's union activities or harbored animus toward him. Consequently, I find no basis to conclude Randolph was not interviewed or selected for other University positions in retaliation for his organizing efforts on behalf of CWA.

Conclusions as to Randolph

Based on the foregoing, I do not find evidence of hostility or animus to Randolph's union activities. Moreover, the actions complained of were taken for legitimate non-pretextual reasons. There is no violation of 5.4a(3) or derivatively (1) of the Act as to Randolph.

Jane Chepitch

Jane Chepitch was a 30-year employee with Rutgers prior to her retirement in 1998. For a

decade prior to her retirement, she held the position of business manager on the Newark campus of the Faculty of Arts and Sciences (FASN). She, like D'Arcy and Tarter, was active in the Administrative Assembly and, in the spring of 1995, became involved in organizing on behalf of the CWA. Her involvement constituted protected activity under Bridgewater.

Norman and Otzenberger were aware of Chepitch's union activities through her participation in the Assembly and discussions with her. Dean Hosford, Chepitch's boss at the FASN, was also aware of Chepitch's 1995 union efforts because they knew each other for 20 years, lived in the same community, occasionally commuted together and spoke about it casually. However, he was not aware of her continuing efforts in the second 1996 RAPSS campaign. There is no evidence he expressed any concern to Chepitch about her union activities or her views generally on unionization. FASN Associate Dean for Administration Gerald Warshaver was also aware of Chepitch's views about unionization during the 1995 CWA campaign but did not know the specific role she played in the organizing effort. Gary Roth, who together with Associate Dean Jonakait, supervised Chepitch in 1996 was aware generally there was a CWA campaign although it is unclear whether Roth was aware of Chepitch's role since he did not work with her until the spring of 1996. There is no evidence former FASN Associate Dean of Instruction G. Miller Jonakait, Chepitch's immediate supervisor, was aware of her union activities.

Unlike D'Arcy, Tarter and Randolph, Chepitch's name and picture do not appear in any CWA literature. Chepitch was involved with the brief second campaign because she handed out RAPSS brochures to interested individuals in her office and building. She was not the Newark campus coordinator listed in the RAPSS pamphlet distributed after the election. Chepitch's union activity ended sometime in the summer of 1996.

CWA contends Chepitch's job was eliminated in June 1997 and she was not interviewed or appointed to other University positions between 1995 and 1997 because of her organizing efforts on behalf of CWA.

Rutgers asserts Chepitch lacked the skills necessary for modern business practices. I find Dean Hosford and Associate Dean Jonakait acted for legitimate business reasons in reorganizing the business functions in the office of the dean in order to modernize the business practices. Hosford was not hostile to Chepitch's organizing efforts, and Jonakait was unaware of her union activities. As to other positions she applied for, Chepitch was given more assistance than other employees to secure positions. She lacked the minimum requirements for many of the positions for which she applied. Finally, central administration was not hostile to Chepitch's union activities: Norman found Chepitch another job but Chepitch left the University anyway.

The Reorganization

CWA asserts the timing of events regarding the reorganization of the FASN business office lends itself to an inference of hostility because Chepitch was involved in organizing efforts within a year of the elimination of her job. It cites Essex Cty. Sheriff's Dept., P.E.R.C. No. 88-75, 14 NJPER 185 (¶19071 1988). Rutgers also cites Essex Cty., but relies on it for the proposition that the events regarding Chepitch are too remote in time to draw an inference of hostility.

In Essex Cty., ten days after filing an "Explanation of Grievance" of which the chief and the rest of the department was aware, charging party was reassigned and ordered to report for training at an irregular time. The training was not in conjunction with his regular duties but was ordered for "attitudinal motivation." Here, Chepitch's job was eliminated in June 1997, approximately a year after she ceased her RAPSS activity and more than a year after the 1995 CWA election. I do not draw an adverse inference of hostility from the timing of those events. See also Rutgers, the State University, P.E.R.C. No. 2001-38, 27 NJPER 91 (¶32034 2001) (anti-union animus inferred from layoff three days after favorable grievance decision awarded employee promotion). Cf. Tp. of West Orange, P.E.R.C. No. 99-76, 25 NJPER 128 (¶30057 1999) (a remark by a deputy chief within a year of charging party's protected activity was too remote in time to support a claim for constructive discharge); Gloucester Cty. College, P.E.R.C. No. 97-73, 23 NJPER 44 (¶28030 1996) (no violation

found where adverse action occurred 11 months after sarcastic remark about charging party's union activity); Middlesex Cty. Voc-Tech, P.E.R.C. No. 84-135, 10 NJPER 347 (¶15160 1984) (several years between protected activity and failure to promote and absence of other evidence establishing nexus between protected activity and adverse action was insufficient to establish unlawful discrimination).

CWA also contends the reorganization resulting in the elimination of Chepitch's position as business manager was concocted to accomplish her removal. It asserts the purported rationale for the reorganization, e.g., the need to computerize to do multi-year budget projections and Chepitch's inability or unwillingness to adopt modern business practices, was pretextual. It relies on the fact Chepitch's evaluation's contained no negative remarks and she was never warned her performance was a concern until after the reorganization plan was well underway. If it was a concern, CWA contends, her supervisors should have followed progressive discipline. CWA also asserts she was never sent for training to assist her to meet performance standards. The evidence in the record does not support CWA's contentions.

Comments about Chepitch's computer skills and the need to up-grade them began in 1985. Her performance appraisal that year reflected the fact she needed additional training in computer usage and urged her to seek it. Again in 1987, she was urged to complete computerization of records tasks. In 1996, Associate Dean Tiger's performance appraisal (Tiger was replaced by Jonakait in the summer of 1996 as Chepitch's supervisor) noted Chepitch met performance standards adequately but cited as an area of improvement the need to address streamlining reporting systems and communication procedures relating to budget balances, commitments and available resources. Tiger noted that in the past there had not been a user friendly systematic flow of information. Tiger's comments were reflective of concerns she had over Chepitch's inability to provide her with computerized multi-year budget projections and what resources were available to plan courses for more than one semester ahead. Tiger did not seek to discipline Chepitch because Warshaver had advised her suggestions for

improvement were an appropriate response to addressing work performance. Hosford also signed off on Chepitch's performance appraisal noting areas for improvement, such as establishment of improved systems and formats for financial reporting and the need to envision new strategies for managing resources. Her 1996 performance appraisal was a clear indication of expectations regarding computer skills and the need to improve reporting systems in the FASN dean's office.

Next, contrary to CWA's assertions, discussions concerning the business office and the functions of the business manager position pre-dated the 1995 CWA campaign. In the spring of 1995 before the filing of the CWA petition, although arguably during the time when discussions of unionization and card collection were occurring, Chepitch and her supervisor Associate Dean Tiger disagreed over the scope of Chepitch's job responsibilities and job description. Chepitch wanted her job reclassified to secure a higher salary. The reclassification did not occur because Tiger and Chepitch could not agree on a job description. CWA contends the failure to submit and support Chepitch's request for a job re-evaluation was in retaliation for her union activities. However, this was not the first time over the years Chepitch complained about her salary range. She had complained often over the years and her position had not been upgraded. There is no evidence that Tiger was aware of Chepitch's union activities at this time or was ever hostile to them.

CWA contends Chepitch was not given training assistance or opportunity to improve her performance. It suggests I infer hostility from management's failure to do so. This inference is not warranted. The evidence establishes that Chepitch had opportunities over the years to acquire computer training and other job training. Rutgers offered such training regularly and free of charge to employees. Chepitch was eligible to attend, did not need Hosford's permission to do so nor was such permission denied. Chepitch was also eligible to attend training outside Rutgers and was permitted to do so. For instance, in 1996, Chepitch was sent to the Chubb Computer Services for training in word processing functions. This training was recommended by Roth and approved by Jonakait. Despite this training, Chepitch persisted in producing budget figures on ledger paper as opposed to computer

spreadsheets.

The evidence also establishes that over the years her supervisors approved most requests Chepitch made to go for general job training. The only exception was when Hosford denied her request to attend classes toward her MBA during work hours. His denial was consistent with office policy requiring employees to take educational benefit classes (classes available tuition-free for Rutgers employees) during non-working hours. I find that Chepitch's failure to acquire computer skills to modernize business practices at the FASN was not because she did not have the opportunity to do so.

CWA maintains that although the reorganization did not take place until 1997, because discussions occurred beginning in 1995, the decision to reorganize was concocted to accomplish the result of removing Chepitch because of her union activities. The evidence does not support this contention.

The actual decision to reorganize was not made by Hosford until late spring of 1997. It was triggered by a combination of factors none of which related to Chepitch's union activities. In 1996, Hosford decided to retire. Because of the difficulties experienced by himself and Tiger in getting budget projections during the prior year, he was particularly concerned Chepitch's outmoded business practices would create problems for his successor. Hosford's years of experience at FASN permitted him to "fly by the seat of his pants" (see finding of fact no.190). His successor did not have that experiential safety net.

Also, Hosford had attempted to assist Chepitch by bringing Gary Roth to the FASN as associate dean for instructional resources. Roth was a long-time administrator with experience in basic office software, word processing, spread sheets and data bases. Hosford hoped Roth would assist Chepitch in changing budget management systems at FASN. Roth had extensive discussions with Chepitch about modernizing office systems and how to accomplish it. By October 1996, Roth was frustrated in his attempts to have Chepitch computerize the accounts and gave her a written warning about her delays in implementing the computerization process. The warning was pulled when Associate

Dean Jonakait met with Chepitch and agreed to pull the warning when Chepitch disagreed with Roth's letter. There is no evidence that Roth acted out of hostility to Chepitch's union activities. He was frustrated with her lack of performance and documented it.

Also triggering Hosford's decision to reorganize and eliminating Chepitch's position, was the arrival in the summer/fall of 1996 of Tiger's replacement, Associate Dean Jonakait. Unlike Tiger and Hosford who had backgrounds as professors in the humanities department and no particular experience with computers, Jonakait was a scientist and particularly concerned with having precise information before making decisions about the allocation of funds. When Jonakait came to FASN, she immediately recognized that this information was not available. She consulted with Hosford and Roth and spoke to Chepitch about her (Jonakait's) expectations for a planning budget and computerization needs. However, when Jonakait observed Chepitch months later still using account ledgers instead of computer spreadsheets, she concluded Chepitch was either unable or unwilling to implement the computer training which Jonakait knew she had gotten at Chubb.

By January 1997, Jonakait and Hosford discussed letting Chepitch go. There is no evidence Jonakait had any knowledge of Chepitch's union activities or discussed them with Hosford or Roth or acted out of hostility to them. She, like Roth and Hosford, was frustrated by Chepitch's failure to modernize FASN business practices.

Chepitch's Attitude

CWA contends Chepitch should have been disciplined if she was not meeting performance standards. However, Roth had attempted to do so. Jonakait and Hosford determined Chepitch's problems were attitudinal. Progressive discipline was not appropriate to correct her attitude. Although CWA asserts Chepitch was not notified of concerns about her performance except for Roth's warning, the evidence supports that Tiger, Roth and Jonakait communicated their concerns to her about getting budget information for future planning.

Nevertheless, even if Jonakait and Hosford were incorrect in their assessment that Chepitch's

problems were not appropriate for progressive discipline, misapplication of the progressive discipline policy does not by itself establish that anti-union animus motivated the reorganization. Hosford's decision to retire, Tiger and Chepitch's difficulties in 1995/1996, Roth's inability to improve Chepitch's performance and Jonakait's assessment of FASN business practices and her inability to deal with Chepitch resulted in the reorganization decision. Union animus did not play a role.

A theme running through Charging Party's case is that Chepitch was a highly successful career employee, having received numerous promotions over the years and that of course, if it was made clear to her what Hosford's, Jonakait's and Roth's expectations were she would have acquired the necessary skills and utilized them. Rutgers asserts that Chepitch's confrontational and abrasive attitude explain why she refused to acquire the necessary skills to function in a computerized office environment.

Numerous witnesses including Norman, Warshaver, Jonakait and Roth described Chepitch as hard working and diligent, but used the term abrasive to describe her work attitude. Norman, in particular, recalled his first meeting with Chepitch a decade earlier, because she complained to him that only employees who do what their bosses want get merit awards. This seemed to him an obvious result of meeting a boss' expectations. Also, Clement Price, one of Chepitch's faculty job references who recommended her for jobs both inside and outside the University, was not surprised when Hosford expressed to him that Chepitch seemed to be unwilling to acquire the necessary computer skills because "[K]nowing Jane Chepitch as I do, if she didn't want to acquire skills she would not" (15T21). Another witness, Jeff Wilson, who was on an interview committee and recommended Chepitch for that position as well as others, told Chepitch that her reputation for abrasiveness was a drawback to her finding another position. Additionally, Marie Melito, testified that she stopped attending business manger's meetings because Chepitch was defensive, argumentative and turned the meetings into gripe sessions. I credit Melito's testimony.

These witnesses were sequestered and testified months apart. Their observations comported with my own observations of Chepitch's demeanor on the stand. She was often confrontational,

argumentative and evasive on cross examination. In several instances, I discredited her testimony because witnesses who would otherwise be expected to be favorable to her, e.g., Price and Wilson, who acted as job references for Chepitch, denied making statements Chepitch attributed to them.

The evidence supports that Chepitch was told her job expectations, but either because she could not or would not adopt modern business practices, Hosford decided to reorganize and eliminate Chepitch's position of business manager and create a new position of associate dean for resources and systems at a range 29 (Chepitch's range had been 26) with added responsibilities for computer systems management and development rather than deal with a seasoned employee who was set in her ways.

Associate Dean for Resources and Systems

CWA maintains that Chepitch was not allowed to compete for the newly-created position of associate dean for resources and systems. It also contends the person hired to fill that position, Richard DaSilva, was not able to implement certain computer programs and left after two years. It asserts the plausibility of the reorganization is called into question because DaSilva's replacement, Bernestine Little, does not have the responsibility for computer programing in her job description.

First, Chepitch was not prevented from applying for the position. She was notified by personnel in July 1997 when the associate dean for resources and systems position was posted. She waited until September to apply. By then, the position was filled.

Second, although DaSilva left after two years, he took another University position as associate dean in the office of student affairs. During his FASN tenure, he put into place a multi-year projection budget and designed a computer program to track part-time lecturers as well as initiating the implementation of a grants manager program, several of the responsibilities identified as the basis for his hiring. When Hosford retired, his replacement, Dean Diner, utilized the document prepared by DaSilva to provide an overall accounting of all FASN resources. When DaSilva moved to the office of student affairs, his replacement was not given responsibility for some of his computer functions because it was determined he was still available to do computer networking across the departments. However, Little

was responsible for maintaining and improving computer systems DaSilva had put into place.

DaSilva was hired because of his extensive knowledge and experience with creating and maintaining computer network systems. Although he only stayed at FASN two years and his replacement does not create computer networking systems, the reorganization accomplished Hosford's and Jonakait's goal of providing a multi-year budget projection for Hosford's successor. There is no indication that Chepitch was prevented from applying for Little's position or that she possessed the skills to maintain the computer systems designed or implemented by DaSilva. The fact that DaSilva may not have completed certain tasks during his tenure or that Little does not have DaSilva's networking capabilities does not render the reorganization implausible or establish that the reorganization was "concocted" solely to get rid of Chepitch because of her 1995/1996 union activities.

The reorganization was too far removed in time to be considered a likely result of Chepitch's union activity.

Other Job Applications.

CWA contends Chepitch applied for 14 other positions at the University and was not interviewed and/or appointed because of her union activities. It asserts that the division of personnel was supposed to assist her but only went through the motions. The record does not support this contention.

CWA did not prove how Rutgers failed to assist Chepitch in finding another position. She was provided information on job openings, contacted after interviews and follow-up calls were made on her behalf to the hiring authorities in the various departments. The evidence demonstrates Chepitch was given as much assistance as other employees similarly situated, and, perhaps, more assistance because she made frequent telephone calls demanding it. There is no evidence of vacancies for which she was prevented from competing. Indeed, Jim Venner, the personnel counselor assigned to assist Chepitch, called her when the new associate dean for resources and systems job was posted in July 1997, but Chepitch did not respond to the posting until September 1, 1997. By then, Hosford had already

offered the job to another candidate.

Venner warned Chepitch when she applied for positions that she was making her search more difficult by limiting herself to positions equal to or better than her range 26 business manager position – the higher the range, the fewer the positions with more competition for each. As a result, many of the positions Chepitch applied for had many applicants. Additionally, Chepitch lacked the basic requirements for many of the positions according to the job postings. For example, she applied for chemistry department administrator despite the requirement of basic knowledge in engineering or physical sciences. She also applied for the position of assistant dean/associate director AFC/EOF which required an advanced degree in counseling, education, social work or related field. Chepitch did not possess these degrees.

CWA contends Chepitch's job search in 1997 was different than she had experienced previously. However, there is no evidence that the application or interview processes were irregular. Both processes were controlled locally by the departments, not central administration. The decision-makers varied depending on the department and the position applied for. Interview committees were made up of different individuals. There is no indication that anyone from central administration communicated with the department regarding Chepitch's candidacy for any position. Even if the interview or application process as defined in the University's guidelines was not adhered to in each and every instance, this does not establish that Chepitch's failure to secure another position was motivated by union animus. See Ocean Cty. Coll. and Corbett, et al., P.E.R.C. No. 85-12, 10 NJPER 502 (¶15630 1984), rev'd 204 N.J. Super. 24 (App. Div. 1985), certif. den. 102 N.J. 327 (1985) (misapplication of layoff and recall policy does not by itself establish union animus motivated the employer to deny re-employment).

There is no evidence to suggest the decision-makers for these positions, with the exception of the position of executive associate for Norman knew, of Chepitch's union activities. None, including Norman, were hostile to them. Regarding the executive associate position, Chepitch had unsuccessfully

applied for this same position in 1992 before any of her CWA activities. When she re-applied in 1997, Norman explained to her he was taking a different approach to the position and hired someone from the University's auditing department. Chepitch had no auditing experience. There is no evidence Norman's explanation was pretextual.

Most importantly, when Norman learned from Chepitch that she was having difficulty finding another position, he found one for her. Even though the position was several ranges below her business manager position, he committed to maintain her salary for two years if not longer. Norman's actions are not consistent with union animus.

Chepitch's problems in securing other University positions were largely due to her own limited search in the types of positions she applied for, her lack of qualifications for many of the positions and the number of qualified applicants for each position. Although Chepitch, like Randolph and Tarter, believed she was qualified or overqualified for the jobs she applied for, this does not mean the persons hired were not qualified or the refusal to hire was motivated by union animus.

Conclusion as to Chepitch

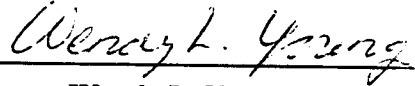
Based on the foregoing, I do not find evidence of hostility or animus to Chepitch's union activities. Moreover, the actions complained of were taken for legitimate non-pretextual reasons. Accordingly, there is no violation of 5.4a(3) or, derivatively, a(1) of the Act as to Chepitch.

CONCLUSIONS OF LAW

The University did not violate 5.4a(3) or, derivatively or independently, a(1) of the Act with respect to its decisions to remove the custodial/maintenance responsibilities from D'Arcy, reduce Tarter's position from twelve months to ten months, layoff Chepitch and Randolph, and not interview or appoint Chepitch, Tarter or Randolph to other positions. Additionally, the University did not violate 5.4a(2) of the Act with respect to the formation and existence of the Administrative Organizing Committee of CWA Local 1031.

RECOMMENDED ORDER

I recommend that the Commission ORDER that the Complaint be dismissed.



Wendy L. Young
Hearing Examiner

DATED: August 9, 2002
Trenton, New Jersey